THE CENTRAL LAW JOURNAL

Hon. JOHN F. DILLON, Editor.
S. D. THOMPSON, Ass't Editor.

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THE NEW BANKRUPT LAW.—We print in this number the full text of the new bankrupt act. In order to lay this important law before our readers at the earliest date, we have set it up from a copy furnished by our correspondent at Washington, which is vouched for as correct, and we have no doubt of its entire accuracy. In a few days, however, we shall have an *authenticated copy* from the state department, and if, on comparison, any inaccuracies should be detected in the law as we now print it, our readers will be advised of it.

INVOLUNTARY BANKRUPTCY—NUMBER OF CREDITORS.—We publish in this number a very late opinion of Mr. District Judge BLODGETT upon the effect of the recent amendment of Sec. 39 of the bankrupt act as to pending cases of involuntary bankruptcy commenced since December 1, 1873, concerning the number of creditors who must join in the proceeding. The learned judge holds that the petition, in cases thus pending, must be amended or made to show that one-fourth in number and one-third in value of the creditors concur.

FEDERAL JURISDICTION UNDER THE 14TH AMENDMENT, AND THE ACT OF APRIL 20, 1871, TO ENFORCE ITS PROVISIONS.—Under the existing railway regulation laws of Illinois, the state in its own name commenced, in one of the courts of the state, a prosecution against the Chicago and Alton Railroad Company, to enforce the law, and the company sought to transfer the cause to the federal circuit court, under the act of April 20, 1871 (17 Stats. at Large, 13). In an opinion delivered by DRUMMOND, circuit judge, on the 18th instant, and in which it stated that Mr. Justice DAVIS concurred, it was held that the cause could not be transferred, and the jurisdiction of the federal court was denied. The opinion of the learned judge is withheld until next week to enable us to get a correct copy.

"Township" Railroad Bonds Under the Missouri Act of March 23, 1868—Remedy of Bondholder—Cass County Case.

A subscriber has desired us to publish the opinion of the Circuit Court of the United States for the Western District of Missouri on the subject of the validity of *township* bonds and the liability of *counties* therefor, and the *remedy* of the bondholder thereon, delivered at the November term, 1873, in the case of Jordan v. Cass County. We had intended to publish the opinion before this, but want of space has prevented. We give now a condensed statement of the case. The action was against the county of Cass upon bonds of the following tenor:

"STATE OF MISSOURI.

$1,000 *Cass County Bond.*

"Know all men, etc., that the county of Cass, in the State of Missouri, acknowledges itself indebted and firmly bound to the Pacific Railroad of Missouri, in the sum of $1,000, which sum the said *County of Cass, for and on account of Mt. Pleasant township*, hereby promises to pay said company, or bearer, at, etc., seventeen years after date, with interest, etc. This is one of twenty five bonds for $1,000 each issued pursuant to an order of the county court of the said county of Cass, made by authority of an act of the General Assembly of the State of Missouri, entitled 'An act to facilitate the construction of railroads in the state of Missouri,' and approved on the 23d day of March, A. D., 1868, and authorized by a vote of more than two-thirds of the voters of said township, to aid in the construction of the Pleasant Hill and Lawrence branch of the Pacific Railroad of Missouri."

The bonds were signed by the presiding justice and attested by the clerk and sealed by the seal of the county court of Cass county.

The petition asked judgment against the county for the amount of the coupons in suit, with interest, damages and costs.

The court (DILLON and KREKEL, JJ.) ruled the following points on a demurrer to the petition:

1. The act of the general assembly of Missouri, of March 23, 1868 (Laws 1868, p. 927; 1 Wagner's Stats. 312), authorizing *township* aid to railways, is not in conflict with the constitution of the state.

2. Art. II, sec. 14, of the constitution of the state, which prohibits the legislature from authorizing any "county, city or town" to subscribe for the stock of any railroad company, unless authorized by two-thirds of the qualified voters therein, does not restrain the legislature from authorizing *township* aid to railways, if two-thirds of the voters of the township shall sanction the proposition.

3. Whether the legislature could, in the case of townships, dispense with the popular sanction, doubted but not decided.

4. As townships were not incorporated bodies, the act of March 23, 1868, above mentioned, when the proposal had been adopted by the voters of the township, authorized the *county court* to issue bonds, *in the name of the county, on behalf* of the township voting the aid. *Held* (construing the legislation of Missouri):

(1.) That the owner of bonds thus issued by a county (or a township) had no remedy by *action* against the township, or taxable inhabitants therein.

(2.) That the remedy of the owner of the bonds was by *mandamus* to the county court, to compel it to levy and collect the special tax which the act provided as the means to pay the bonds and interest thereon.

(3.) That such an owner could *sue the county* in whose *name* the bonds were issued, in the federal court, and recover judgment thereon; but that such judgment could not be enforced against the county or its property, or the tax-payers of the county at large, but only by *mandamus* to the county court to compel the levy and collection of a special tax, according to the statute in such case provided.

The demurrer was overruled and judgment was rendered accordingly in this special form. The opinion in the case concludes in these words:

"Upon the whole, our judgment is that the action is well brought against the county; that the county may make defence, but if the plaintiff shall be found entitled to recover, he may have judgment against the county for his debt, damages and costs, to be enforced, if necessary, by *mandamus* against the county court or the judges thereof, to compel them to levy and collect a special tax according to the statute in such case provided, and not otherwise."

The principle asserted in the above case that debts iccurred by or in the name of a public or *quasi* corporation cannot be enforced against the *private property* of the inhabitants, has since then been affirmed by the Supreme Court of the United States in Rees v. Watertown (Central Law Journal, *ante*, p 161.).

Exemptions Under the Bankrupt Law—Act of March 3, 1873.

It is well known that under the bankrupt law, as originally enacted, there was exempted from the assignment of property required to be made by the bankrupt to his assignee, among other, such property as was exempt from levy and sale under execution by the laws of the state in which the bankrupt had his domicile at the time of the commencement of the proceedings in bankruptcy, to an amount not exceeding that allowed by such state exemption laws in force in the year 1864.

By an amendatory act passed on the 8th June, 1872, this provision was changed so as to give the bankrupt the benefit of exemptions under laws in force in 1871. In 1872 the Court of Appeals of Virginia unanimously decided (22 Gratt. 266) that the provision of the constitution just referred to, and the statute giving effect to the same, so far as they applied to contracts entered into, or debts contracted before their adoption, were in violation of the constitution of the United States, and therefore void. After this decision, on the 3d of March, 1873, congress passed another act in the following words:

"*Be it enacted, etc.*, That it was the true intent and meaning of an act approved June 8, 1872, entitled, etc., that the exemptions allowed the bankrupt by the said amendatory act should and it is hereby enacted, that they shall be the amount allowed by the constitution and laws of each state respetively, as existing in the year 1871; and that such exemptions be valid against debts contracted before the adoption and passage of such state constitution and laws, as well as those contracted after the same, and against liens by judgment or decree of any state court, any decison of any such court rendered since the adoption and passage of such constitution and laws to the contrary notwithstanding."

On the 6th day of July, 1869 the new constitution of Virginia took effect, in which it was provided that every householder or head of a family should be entitled, in addition to the articles then exempt from levy or distress for rent, to hold exempt from levy and sale under execution, etc., issued on any demand for any debt *theretofore* or thereafter contracted, his real and personal property, etc., to the value of $2,000, to be selected by him. An act of the general assembly of Virginia, approved June 27, 1870, gave effect to this provision by prescribing in what manner and upon what conditions such householder could set apart and hold such exemption.

The validity of the act of March 3, 1873, recently came before Chief Justice WAITE and BOND, circuit judge, in the U. S. circuit court in Virginia, in the case of Daniel Deckert, a bankrupt, a synopsis of which we published last week. After affirming that it was competent for congress to adopt the exemption laws in force in the several states, though the amount exempted was different (*In re* Beckerford, 1 Dillon 45), the court proceeded to notice the act of 1873, and held that it violates the principle of *uniformity* required by the constitution (Art. 1. § 8.) Speaking of this subject, the chief justice says:

"The act of 1873 goes further, and excepts from the operation of the assignment not only such property as was actually exempted by virtue of the exemption laws, but more. It does not provide that the exemption laws as they exist shall be operative and have effect under the bankrupt law, but that in each State, the property *specified* in such laws, whether actually exempted by virtue thereof or not, shall be excepted. It in effect declares by its own enactment, without regard to the laws of the states, that there shall be one amount or description of exemption in Virginia and another in Pennsylvania. In this we think it is unconstitutional, and therefore void. It changes existing rights between the debtor and creditor. Such changes, to be warranted by the constitution, must be uniform in their operation. This is not. The consequence is that the act of 1872 remains unchanged, notwithstanding its attempted amendment in 1873."

Deckert became a bankrupt March 31, 1873, and on the 20th day of August, 1873, filed his petition claiming a homestead under the new constitution of Virginia and the act of congress of March 3, 1873. Applying the principles above stated it was held that as to all debts contracted by the bankrupt prior to July 6, 1869, the bankrupt was not entitled to the homestead exemption, but was thus entitled as to all debts contracted after that time.

Admissions to the Bar.

Considerable discussion is going on in some of the law journals with reference to the practice of admitting candidates to the bar upon no other guaranty of fitness than the diploma of a law school. The law journals which have discussed the propriety of this practice, have, so far as we know, taken grounds against it. The Albany Law Journal, The Legal Intelligencer, the Washington Law Reporter, and the Daily Register have recently called attention to the practice, taking ground in favor of its abolishment.

The Albany Law Journal for May 23 contained a brief but pointed reference to this subject, which has called forth two or three commendatory letters. It said: "Within the past two weeks the ranks of the legal profession in this state have been swelled by the admission to the bar of about four hundred gentlemen. It is, however, doubtful whether the profession is to be congratulated for this accession. In 1871 the legislature provided that a term of three years' study should be necessary to qualify a person for admission to the bar, but at the same time excepted the law schools of the state from the provisions of the act. As the graduates of these schools are entitled, by statute, to admission to the bar, and as the term of study in some of them covers only nine months, and in none of them exceeds two years, the practical effect of the act has been to drive students to the law schools as a short-cut to the bar. These schools are good so far as they go, but that they are equal to the proper preparation of young men for the practice of the legal profession is not true. The instruction of the school combined with that of the office is to be preferred to the instruction of either alone; but if a young man can avail himself of only one, he would much better take that of the office. He will there get some experimental knowledge along with his theories, which he never can do at a school. We believe that no man should be admitted to the bar without having first studied the law for at least three years, and that at least a year of that term should be spent in the office of a practicing attorney. Anything short of this is an injury to the student himself. Every lawyer who has turned his attention to the matter knows that a premature rushing into practice without a competent knowledge of the law has blasted the hopes and ruined the expectations of hosts

of young men who, properly instructed, might have acquitted themselves creditably. It is an old observation, and one generally true, that if a man does not obtain a character in any profession soon after his entrance therein he is not likely ever to obtain one."

The Daily Register pithily says: "The question then resolves itself into this: Who shall stand as sentinels at the entrance to the bar—members in active practice of the law and identified with the honor and dishonor of the profession, or those who have studied the theory of the law only and teach it to all comers who can pay the matriculation fee?"

It seems that in New York a law exists which provides that a certificate of certain law schools, setting forth the fact that the holder has studied law for two years, shall be held to be sufficient to entitle the presenter thereof to be admitted to the practice of the law in any of the state courts. Concerning this law, the Daily Register says:

"This law virtually denies to the judges on the bench and the lawyers practicing at the bar any authority to pass upon the qualifications, either mental or moral, of candidates for admission, except such as have studied for three years in some law office. We will not now stop to speak of this invidious distinction, but confine ourselves to the question: Is it wise in the profession to part, without a struggle, with the power to examine, by a committee of members in good standing, into the qualifications of men seeking admission to the most conservative, the most influential and the most honorable of all the learned professions? We think that a sufficient number of unworthy members have crept in under the system which this law overrides, and society has grievously suffered at the hands of those ignorant and bad men, but open wide the gate and let a professor's certificate insure ready admission to the bar and soon you will have our courts filled with mere theorists and speculators, whose blunders and mispleadings will cause great confusion and serious losses."

The New York bar association have recently had the matter under discussion, but with what result we are not informed. At a recent meeting of the Washington bar association a resolution was passed for the appointment of a committee to wait upon the judges, and to urge that the rule of court under which graduates from the various law schools in that city are admitted to the bar without examination, be so modified as to require a reference of the applications of such graduates to examining committees, for action and report as in other cases.

In St. Louis candidates for admittance to the bar must undergo a rigid examination before the five circuit judges, unless they are attorneys of some other court of Missouri, or have been graduated from one of the two law schools of this state. Out of each class of candidates examined, a large per centage is usually rejected; and candidates are not unfrequently rejected who have diplomas from the leading law schools of the country. It looks odd to see lawyers who have had twenty years' successful practice in other states sit down with the tyros and undergo a searching examination in the elements of the law; but justice to the public and to the bar require that all should go through this ordeal. And it has happened in these examinations that old lawyers, or at least that old men claiming to be old lawyers, have been rejected, and not improperly; and it has not unfrequently happened that young men who came armed with the diplomas of law schools, have betrayed in these examinations scarcely the faintest glimmering of legal knowledge.

Whether the diploma of a law school ought, without further examination, to entitle its possessor to admittance to the bar, is a question of much interest to the bar, and also to the public. Much, doubtless, could be said in favor of such a regulation, as well as against it. Considering the great work which law schools are expected to accomplish in the training of scientific lawyers, it has no doubt been thought wise to encourage their attendance by young men seeking admittance to the bar, by making a certificate of graduation a passport to its honors. But it would really seem that such effect ought not to be given to the diplomas of law schools whose course of study is only one year in duration, or to those of schools whose course is nominally two years, but whose yearly terms are but six or eight months in length. It is impossible that the best intellects, in so short a space of time, can do more than learn how to study the law; to say nothing of acquiring sufficient knowledge to entitle them to hold themselves out to the public as persons learned in the law; to advise clients and manage causes in matters involving life, liberty and property, and the dearest interests of society.

In Massachusetts, whose bench and bar have always maintained a high standard and exerted a great power upon the jurisprudence of the whole country, it seems that the diploma of no law school—not even that of Cambridge, renowned for its eminent professors, and for its thorough course of study, lasting three years—will entitle its possessor to admittance to the bar. A correspondent in the Albany Law Journal, of June 20, says: "Even if a student spend a three-years' course and graduates from the Cambridge law school, still he is obliged to submit himself to an examination by a committee of the supreme court, or by a judge of that court, and on written questions at that—questions numbering upwards of two hundred, and covering the broad fields of topics and subjects which are usually taught at schools of law—before he can be admitted to practice in the courts of the state. I speak from personal experience." We should suppose that if even Cambridge may not claim for the possessors of its diplomas an unquestioned admittance to the honors and profits of the Massachusetts bar, the lesser law schools throughout the country might submit to the same rule with advantage to the public, to the bar, and especially to their students, although it is quite likely that it might diminish their annual receipts.

Taxation—The Illinois "Grab Law" of 1869 Unconstitutional.

RUFUS N. RAMSAY v. CHARLES HOEGER, COLLECTOR OF TAXES.

Supreme Court of Illinois, Springfield, June Term, 1874.

Hon. SIDNEY BREESE, Chief Justice.
" PINKNEY H. WALKER,
" BENJAMIN R. SHELDON,
" JOHN M. SCOTT,
" W. K. MCALLISTER,
" A. M. CRAIG,
" JOHN SCHOLFIELD,
} Judges.

1. **Taxation—Illinois Act of 1869 Unconstitutional.**—The act of the Illinois legislature in force April 16, 1869, which provided that whenever a county, township, town, or city shall aid a railroad, the increase of revenue which shall accrue from such county, township, town or city, together with such revenue as shall accrue from the

taxation of such railroad within the same shall be appropriated and set apart by the state for the liquidation of the registered bonds of such county, township, town or city, instead of being applied to general purposes, is in conflict with § 6 of article 9 of the constitution of 1870, and is therefore inoperative and void.

2. **Exemption from Taxation—Contract.**—A law exempting several municipalities from taxation does not create a contract between the state and municipality, although debts may have been contracted upon the faith of such exemption.

This was an agreed case appealed from Clinton county,

G. Van Hoorebeke, for the appellant; *F. A. Lietze*, for the appellee.

SCHOLFIELD, J., delivered the opinion of the court.

The question is presented by this record whether under the constitution and laws in force when the tax sought to enjoined was levied, a higher rate of taxation can be imposed for state purposes on taxable property in counties which have no outstanding indebtedness incurred in aid of the construction of railways than is imposed on taxable property in counties which have such indebtedness. That the tax levied by the act in force July 1, 1873, has been so apportioned is admitted by both parties, and it is claimed by the appellee to be justified by the provisions of an act in force April 16, 1869, entitled "an act to fund and provide for paying the railway debts of counties, townships, cities and towns." The only sections of this act bearing on the question are the first, fourth, fifth and ninth, and are as follows:

"SECTION 1. Whenever any county, township, incorporated city, or town shall have created a debt which still remains unpaid, or shall create a debt, under the provisions of any law of this state, to aid in the construction of any railway or rail ways that shall be completed within ten years after the passage of this act, whose line shall run near to or into, or through said county, township, city, or town, it shall be lawful for the state treasurer, and he is hereby required, immediately upon receiving the revenue of each year, to place to the credit of such county, township, city, or town, so having incurred such indebtedness in the state treasury, annually, for and during the term of ten years, all the state taxes collected and paid into the state treasury on the increased valuation of the taxable property of said county, township, city, or town as shown by the annual assessment rolls over and above the amount of the assessment rolls of the year 1868, excepting the state school tax and the two-mill tax provided for by the constitution of this state for the payment of the state debt; and whenever any county, township, city, or town shall have created a debt as aforesaid, it shall also be lawful for the collector of the taxes, and he is hereby required annually for and during the term of ten years, to pay into the state treasury all the tax collected for any purpose whatever on the assessment of the railway or rail ways for whose aid the said debt was incurred, including the road-bed and superstructure, and all fixtures and appertunances thereof—the locomotives, cars, machinery, and machine-shops, depot, and all other property real and personal of said railway companies within such county, township, city, or town, and immediately upon receiving the same the state treasurer shall place to the credit of such county, township, city, or town in the state treasury the whole amount so received, except the state school tax and the two mill tax provided by the constitution of the state for the payment of the state debt; and it shall be the duty of said collector of taxes to furnish the state auditor a separate and detailed account of taxes collected from said railway or railways at the time of his annual settlement with the state auditor; and the state treasurer shall give to said collector separate receipts for the respective amounts paid into the state treasury to the credit of said county, and said receipts shall be taken and received by the county court, or other legal authorities, as vouchers for the amount collected on account of the county and local assessment on said railway property in the annual settlement with such collector, and the several amounts of money in this section provided and ordered to be placed to the credit of such county, township, city, or town, shall be applied by the state treasurer to the payment of the bonded railway debt of such county, township, city, or town, as hereinafter provided.

"SEC. 4. When the bonds of any county, township, city, or town shall be so registered, the state auditor shall annually ascertain the amount of interest for the current year due and accrued and to accrue upon such bonds, and from the amount so ascertained he shall deduct the amount in the state treasury placed to the credit of such county, township, city, or town, as herein provided and directed, and from the basis of the certificate of valuation of property heretofore provided to be transmitted to him, or in case no such certificate shall be filed in his office, then upon the basis of the latest assessment of such county, township, city, or town for the year next preceding, he shall estimate and determine the rate per centum on the valuation of property to meet and satisfy the amount of interest unprovided for, together with the ordinary cost to the state of collection and disbursement of the same, to be estimated by the auditor and treasurer, and shall make and transmit to the county clerk of such county, or to the officer in authority, whose duty it shall be to prepare the estimates and books for the collection of state taxes in such county, township, city, or town, a certificate stating such estimated requisite per centum for such purpose to be filed in his office, and the same per centum shall thereupon be deemed added to a part of the per centum which is or may be levied, as provided by law for the purpose of state revenue, and shall be so treated by the clerks or officers in authority in making such estimates for the collection of taxes; and the said tax shall be collected with the state revenue, and all relating to the state revenue shall apply thereto, except as herein otherwise provided.

"SEC. 5. The state shall be deemed the custodian only of the several taxes so collected and credited to such county, township, city, or town, and shall not be deemed in any manner liable on account of any such bonds; but the tax and funds so collected shall be deemed pledged and appropriated to the payment of interest and principal of the registered bonds herein provided for until fully satisfied. The state shall annually collect and apply all the said taxes and funds placed to the credit of such county, township, city or town, for and during the term of eight years, to the payment of the annual interest on such registered bonds of such county, township, city or town, in the same manner as interest on the bonds of the state, or may be collected and paid out in like moneys as shall be receivable in payment of state taxes, and for and during which said registered bonds shall remain unpaid the funds provided in the first section of this act, accruing from taxes collected from the property of said railway or railways, and the surplus of any of the other funds provided in this act remaining after the payment of interest on the bonds, shall be applied to the payment of the principal of said registered bonds, on presentation at the state treasury; or the treasurer shall purchase the same in open market at not more than par, and upon such payment or purchase of the said bonds, the amount paid upon the principal of said bonds shall be endorsed thereon, and receipts therefor shall be taken and filed in the office of the state treasurer, and the interest coupons or bonds, when fully paid, shall be returned to the office of the state treasurer, and shall be canceled and destroyed in the same manner as those appertaining to the state debt; and the fund derived from the taxes collected on the increased assessment over the year 1868, and the tax levied to meet the interest on said registered bonds shall continue to be annually applied to the interest of said bonds; and the said taxes and funds required in this act to be placed to the credit of counties, townships, cities and towns, shall be applied by the state treasurer to the payment of the registered railway bonds of such counties, townships, cities and towns equally and without discrimination.

"SEC. 9. The state auditor, from the total value of all the property in the state, after the same shall have been equalized in ac-

cordance with the provisions of 'an act to amend the revenue laws and to establish a state board of equalization of assessments,' approved March 8, 1867, shall deduct the amount of said increased valuation of the taxable property above the valuation of the year 1868, in such counties, townships, incorporated cities and towns as may be entitled to the benefits of this act, and the taxes upon which are herein directed to be credited to counties, townships, cities and towns, and upon the amount remaining he shall cause to be collected such a per cent. as shall be sufficient to pay the appropriations and other demands upon the treasury due to the end of each fiscal year, and the same per cent. shall also be collected on the said increased valuation above the valuation of 1869, and applied as herein provided."

It cannot be held, as insisted by the counsel for the appellee, that this statute constitutes a contract between the state and the creditors of the counties, townships, cities and towns intended to be aided, for the plain reason that the legislature was prohibited from making such a contract by article 3 of the constitution of 1848, which declares that the credit of the state shall not in any manner be given to or in aid of any individual, association or corporation. It is impossible to say that such creditors can have a claim upon the state unless its credit was in some manner given, nor can we conceive how there can be a vested right in that which cannot be granted. The necessary effect of the act was to exempt tax-payers in the counties, townships, cities and towns included in its provisions from the payment of so much of the state tax as is appropriated to the particular counties, townships, cities and towns. The debts in aid of which the appropriation is made are local only. Dunnovan *et al.* v. Green, 57 Ills. 63. They are created by municipal authority for what are, at least theoretically, municipal purposes, and therefore, for a sufficient consideration received by the municipality. It is upon this hypothesis, alone, that such corporations have been held to possess power to subscribe for shares of capital stock in railway companies and incur indebtedness to pay the subscription. Prettyman v. The Supervisors of Tazewell Co., 19 Ill. 406; Robertson v. The City of Rockford, 21 Id. 457; Johnson v. County of Stark, 24 Id. 85. It cannot be denied that at the date of this enactment the state possessed power to require that full and equal taxation should be levied for state purposes upon all the taxable property in the state, without regard to the indebtedness of the particular counties, townships, cities and towns favored by the act; and since the taxpayer is, aside from the act, liable to be taxed for the payment of the debts of the county, township, city or town in which his property is subject to taxation, it cannot be said that the state has received any consideration for the exemption granted by the act. We cannot, then, otherwise regard the exemption from state taxation, as contemplated by the act, than as mere gratuity, the continuance of which rested in the pleasure of the legislature and the sovereign power of the state. No doubt many persons have been, through a misapprehension of its proper construction or effect, induced to vote to incur indebtedness by particular counties, townships, cities and towns to a greater extent than they otherwise would, but we can perceive no difference between their condition and that of the individual who, relying on the continuance of the bounty of a friend or relative, contracts debts which the subsequent withdrawal of that bounty leave him to pay from his own limited resources. The rule is that exemptions from taxation are always subject to be recalled when they have been granted as a mere privilege and not for a sufficient consideration. Cooley's Constitutional Limitations, 383. It is manifest, therefore, that a system of taxation enforced either by a new constitution, or by an act of the general assembly, inconsistent with the provisions of this act, would necessarily to that extent render it inoperative, although there might be no professed design to repeal it. Hills v. Chicago, 60 Ill. 86. It is argued that it was not intended by those who framed the present constitution to repeal any of the provisions of the act of 1869; that it was only intended to ordain a revenue system which should apply to the future. This may be so; yet if the language of that instrument is clear and free from ambiguity or doubt, it must control whatever may have been the design of those by whom it was framed. Cooley's Constitutional Limitations, 69. It cannot be denied that when the general assembly did, subsequent to its adoption, enact a revenue system, such system was required to conform to its provisions. It surely cannot be claimed that, under the guise of enacting laws to give effect to the provisions of a constitution, principles can be perpetuated in diametrical opposition to those provisions. The present constitution contains the following, section 6, article 9: "The general assembly shall have no power to release or discharge any county, city, township, town or district whatever, or the inhabitants thereof, or the property therein, from their proportionate share of the taxes to be levied for state purposes; nor shall the commutation for such taxes be authorized in any form whatsoever." Section 1 of the same article requires the general assembly to provide such revenue as may be needful, by levying a tax by valuation, so that every person or corporation shall pay a tax in proportion to the value of his property. The language of these sections is so clear and unambiguous that there can be no necessity of resorting to the debates of the constitutional convention to ascertain their plain, obvious and natural meaning. The tax involved in the present suit is levied by virtue of an act in force July 1st, 1873, which is as follows:

"There shall be raised by levying a tax by valuation upon the taxable property in this state the following sums for the purpose hereinafter set forth for general state purposes, to be designated a revenue fund: $2,500,000 upon the assessed value of 1873, and $1,500,000 annually thereafter; for state school purposes, to be designated a state school fund in lieu of the two mill tax therefor, $1,000,000 annually."

"Sec. 2. The governor and auditor shall annually compute the separate rates of per centage required to produce not less than the above amounts, anything in any other act providing a different manner of ascertaining the amonnt of revenue required to be levied for state purposes to the contrary notwithstanding, and when so ascertained the auditor shall certify to the county clerks the proper separate rates per cent. therefor, and also such definite rate as now or hereafter may be provided by law to be levied and collected as state taxes."

This tax is levied on all the taxable property in the state, and it is not admissible either under the language of the act of the constitution that the proportional amount of each taxpayer, as determined with reference to such valuation in some counties, townships, cities or towns, there shall only be required to pay one-half or one-third, while in other counties, townships, cities and towns shall be required to pay that much more.

The duties of the governor and auditor in respect to this levy were purely ministerial. They had no authority to do more than compute the separate rates of per centage required to produce the amount of the levy, and when this was done, and the result certified to by the auditor to the county clerks, there was no authority in the law or under the constitution to extend it otherwise than equally upon all taxable property, in proportion to its value, as ascertained and determined by those upon whom the law imposes the duty of assessing it. Section 4 of the act of 1869, it will have been observed, requires the auditor and treasurer, after ascertaining the deficiency in the amount necessary to pay the interest upon the indebtedness of any county, township, city, or town, incurred in aid of the construction of railways for the current year, after deducting the sum which may have been received for that purpose, under section 1, to estimate and determine the rate per centum on the valuation of property within such county, township, city, or town required to meet and satisfy the amount of interest unprovided for, together with the ordinary cost to the state of collection and disbursement of the same, to be

estimated by the auditor and treasurer, and shall make and transmit to the county clerk of such county a certificate of such estimated requisite per centum for such purpose, to be filed in his office, and the same per centum shall thereupon be deemed added to and a part of the per centum which is or may be levied and provided by law for the purposes of state revenue, and shall be so treated by such clerk, etc. This clearly authorizes the levy and collection of the amount necessary to supply the deficiency in the payment of the interest due upon the indebtedness of such counties, townships, cities, and towns, incurred in aid of the construction of railways, as state revenue; but it is expressly limited to the county, township, city, or town by which the particular indebtedness is incurred, and so far as the last clause of section 2 of the act in force July 1, 1873, can have any reference to the act of 1869, it must relate to this section. It certainly confers no authority to extend a tax levied for the purpose of paying municipal indebtedness incurred by one county, township, city, or town upon the taxable property of a different county, township, city, or town; nor does it authorize the $3,500,000 to be apportioned otherwise than equally upon the assessed value of all the taxable property in the state. No words that we can conceive can add force of expression to the language of the constitution before quoted: "but the general assembly shall have no power to release or discharge any county, city, township, town, or district whatever, or the inhabitants thereof, or the property therein, from their or its proportionate share of taxes to be levied for state purposes." Even the general assembly, which levied the present tax, derived its existence from the provisions of the same constitution, and if this provision was not binding upon it, it is impossible to conceive that it ever can have any obligatory force. It is impossible for us to escape the conclusion that under the constitution and law now in force, so much of the act of 1868, as requires the state revenue to be collected on the valuation of the taxable property in the state remaining after deducting in counties, townships, cities, and towns which have outstanding indebtedness incurred in and for the construction of railways, the increased valuation of the taxable property over that of the year 1868, is abrogated and cannot be enforced. The same question substantially as that represented by the present case was before this court in People *ex rel.* v. Kaskaskia Navigation Co., at the June term, 1872, and the views here expressed are in harmony with what was there said. We forbear the expression of any opinion as to whether so much of the $3,500,000 actually and legally levied for state purposes, as shall be collected from the increased valuation over that of 1868, which is claimed to be appropriated to the particular counties, townships, cities, and towns, can be maintained as a standing appropriation, as that question is not now before us. The decree of the court below is reversed and the case remanded with directions to that court to ascertain the rate per cent. required to produce the sum levied by the act in force July 1, 1873, for state purposes; to enjoin the collection of all state taxes levied on the property of the appellee in excess of that rate.

SCOTT, J., dissenting.

REVERSED AND REMANDED.

Forms of Action in the Territorial Courts—Mingling of Legal and Equitable Remedies.

JAMES HORNBUCKLE *et al.* v. JOHN TOOMBS.

Supreme Court of the United States, No. 139, October Term, 1873.

1. **Procedure in Territorial Courts—Forms of Action—Mingling of Legal and Equitable Remedies.**—There is nothing in the process act of 1792, nor in the act organizing the territory of Montana, which prohibits the territorial legislature from passing an act providing that in the territorial courts legal and equitable remedies may be pursued in the same suit.

2. ——. ——. ——. Whether this would be so where the territorial courts sit *as federal courts* in cases arising under the constitution and laws of the United States, as distinguished from cases arising under the territorial municipal laws, *quære*.

3. **Cases Overruled.**—Orchard v. Hughes, 1 Wall. 77, and Dunphy v. Kleinsmith, 11 Wall. 610, overruled.

4. **Dictum—Statement of the General Rule.**—The court conclude that the practice, pleadings, forms and modes of proceeding of the territorial courts, as well as their respective jurisdictions, were intended to be left to the legislative action of the territorial assemblies, and to the regulations which might be adopted by the courts themselves, subject to a few express or implied conditions in their organic acts.

In error to the Supreme Court of the territory of Montana.

Mr. Justice BRADLEY delivered the opinion.

This was an action brought by Toombs, the defendant in error, against the plaintiff in error in a district court of the territory of Montana, for damages caused by the diversion of a stream of water, by which the plaintiff's farm was deprived of irrigation, and for an adjudication of his right to the stream, and an injunction against further diversion. The action was framed and conducted in accordance with the practice as established by the legislative assembly of the territory, of which the following are the material provisions:

"Section 1. There shall be in this territory but one form of civil action for the enforcement or protection of private rights and the redress or prevention of private wrongs."

"Sec. 2. In such action, the party complaining shall be known as the plaintiff, and the adverse party as the defendant."

"Sec. 38. The only pleadings on the part of the plaintiff shall be the complaint, demurrer, or replication to the defendant's answer; and the only pleadings on the part of the defendant shall be a demurrer to the complaint, or a demurrer to the replication, or an answer to the complaint." * * *

"Sec. 155. An issue of fact shall be tried by a jury, unless a jury trial is waived, or a reference be ordered, as provided in this act."

The case was tried by a jury, who found for the plaintiff, assessed his damage at one dollar, and decided that he was entitled to seventy inches of the water. Upon this verdict the court gave judgment, and awarded an injunction as prayed.

The only errors assigned are based on the intermingling of legal and equitable remedies in one form of action.

Such an objection would be available in the circuit and district courts of the United States. The process act of 1792 (1 Stat. 275) expressly declared that in suits in equity, and in those of admiralty and maritime jurisdiction, in those courts, the forms and modes of proceeding should be according to the principles, rules, and usages which belong to courts of equity and to courts of admiralty respectively, as contradistinguished from courts of common law, subject to such alterations and additions as the said courts respectively should deem expedient, or to such regulations as the supreme court should think proper to prescribe. The supreme court in prescribing rules of proceeding for those courts, has always followed the general principle indicated by the law. Whether the territorial courts are subject to the same regulation is the question which is now fairly presented.

In the case of Orchard v. Hughes (1 Wall. 77) a majority of this court was of opinion that the territorial courts were subject to the same general regulations in equity cases which govern the practice in the circuit and district courts. That was the case of a forclosure of a mortgage in the territorial court of Nebraska, and the court, under a territorial law, not only decreed a foreclosure and sale of the mortgaged premises, but gave a personal decree against the defendant for the deficiency. We had decided in Noonan v. Lee, 2 Black, 499, that under the equity rules prescribed for the circuit and district courts, such a decree could not be made. The majority of the court now applied the same rule in the case of Orchard v. Hughes, although it was decided by territorial court. Following out the principle involved in that decision, we subsequently, in the case of Dunphy v. Kleinsmith, 11 Wall. 610, reversed a judgment of the Supreme Court of Montana, on the ground

that the case (being in nature of a creditor's bill, filed to reach property which the debtor had fraudulently conveyed) was a clear case of equity, whilst the proceedings therein exhibited no resemblance to equity proceedings, there being a trial by jury, a verdict for damages, and a judgment on the verdict.

On a careful review of the whole subject we are not satisfied that those decisions are founded on a correct view of the law. By the 6th section of the organic act of the territory of Montana (13 Stat. 85), with which that of Nebraska substantially agreed, it was enacted, "that the legislative power of the territory shall extend to all rightful subjects of legislation consistent with the constitution of the United States and the provisions of this act." By the 9th section it was provided "that the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace," and that the "jurisdiction of the several courts herein provided for, both appellate and original, and of that of the probate courts and justices of the peace, shall be limited by law; *Provided*, [that] the said supreme and district courts respectively shall possess chancery as well as common-law jurisdiction."

Now, here is nothing which declares, as the process act of 1,92 did declare, that the jurisdictions of common law and chancery shall be exercised separately, and by distinct forms and modes of proceeding. The only provision is, that the courts named shall possess both jurisdictions. If the two jurisdictions had never been exercised in any other way than by distinct modes of proceeding, there would be ground for supposing that congress intended them to be exercised in that way. But it is well known that in many states of the Union the two jurisdictions are commingled in one form of action. And there is nothing in the nature of things to prevent such a mode of proceeding. Even in the circuit and district courts of the United States the same court is invested with the two jurisdictions, having a law side and an equity side; and the enforced separation of the two remedies, legal and equitable, in reference to the same subject-matter of controversy, sometimes leads to interesting exhibitions of the power of mere form to retard the administration of justice. In most cases it is difficult to see any good reason why an equitable right should not be enforced, or an equitable remedy administered in the same proceeding by which the legal rights of the parties are adjudicated. Be this, however, as it may, a consolidation of the two jurisdictions exists in many of the states, and must be considered as having been well known to congress; and when the latter body, in the organic act, simply declares that certain territorial courts shall possess both jurisdictions, without prescribing how they shall be exercised, the passage by the territorial assembly of a code of practice which unites them in one form of action, cannot be deemed repugnant to such organic act.

A clause in the 13th section of the act, however, has been referred to, by which it is declared "that the constitution and all laws of the United States, which are not locally inapplicable, shall have the same force and effect within the said territory of Montana as elsewhere in the United States;" and it is argued, that by virtue of this enactment, all regulations respecting judicial proceedings which are contained in any of the acts of congress, are imported into the practice of the territorial courts. But this proposition is not tenable. Laws regulating the proceedings of the United States courts are of specific application, and are, in truth and in fact, locally inapplicable to the courts of a territory. There is a law authorizing this court to appoint a reporter. In one sense this law is not locally inapplicable to the supreme court of the territory; but in a just sense it is so. The law has a specific application to this court, and cannot be applied to the territorial court without an evident misconstruction of the true meaning and intent of congress in the clause of the 13th section above referred to. That clause has the effect, undoubtedly, of importing into the territory the laws passed by congress to prevent and punish offences against the revenue, the mail service, and other laws of a general character and universal application; but not those of specific application.

The acts of congress respecting proceedings in the United States courts are concerned with, and confined to, those courts, considered as parts of the federal system, and as invested with the judicial power of the United States expressly conferred by the constitution, and to be exercised in correlation with the presence and jurisdiction of the several state courts and governments. They were not intended as exertions of that plenary municipal authority which congress has over the District of Columbia and the territories of the United States. They do not contain a word to indicate any such intent. The fact that they require the circuit and districts courts to follow the practice of the respective state courts in cases at law, and that they supply no other rule in such cases, shows that they cannot apply to the territorial courts. As before said, these acts have specific application to the courts of the United States, which are courts of a peculiar character and jurisdiction.

Whenever congress has proceeded to organize a government for any of the territories, it has merely instituted a general system of courts therefor, and has committed to the territorial assembly full power, subject to a few specified or implied conditions, of supplying all details of legislation necessary to put the system into operation, even to the defining of the jurisdiction of the several courts. As a general thing, subject to the general scheme of local government chalked out by the organic act, and such special provisions as are contained therein, the local legislature has been entrusted with the enactment of the entire system of municipal law, subject also, however, to the right of congress to revise, alter, and revoke at its discretion. The powers thus exercised by the territorial legislatures are nearly as extensive as those exercised by any state legislature; and the jurisdiction of the territorial courts is collectively co-extensive with and correspondent to that of the state courts—a very different jurisdiction from that exercised by the circuit and district courts of the United States. In fine, the territorial, like the state courts, are invested with plenary municipal jurisdiction.

It is true that the district courts of the territory are, by the organic act, invested with the same jurisdiction in all cases arising under the constitution and laws of the United States as is vested in the circuit and district courts of the United States, and a portion of each term is directed to be appropriated to the trial of causes arising under the said constitution and laws. Whether, when acting in this capacity, the said courts are to be governed by any of the regulations affecting the circuit and district courts of the United States, is not now the question. A large class of cases within the jurisdiction of the latter courts would not, under this clause, come in the territorial courts; namely, those in which the jurisdiction depends on the citizenship of the parties. Cases arising under the constitution and laws of the United States would be composed mostly of revenue, admiralty, patent, and bankruptcy cases, prosecutions for crimes against the United States, and prosecutions and suits for infractions of the laws relating to civil rights under the XIVth and XVth amendments. To avoid question and controversy as to the modes of proceeding in such cases, where not already settled by law, perhaps additional legislation would be desirable.

From a review of the entire past legislation of congress on the subject under consideration, our conclusion is that the practice, pleadings, and forms and modes of proceeding of the territorial courts, as well as their respective jurisdictions, subject, as before said, to a few express or implied conditions in the organic act itself, were intended to be left to the legislative action of the territorial assemblies, and to the regulations which might be adopted by the courts themselves. Of course, in case of any difficulties arising out of this state of things, congress has it in its power at any

time to establish such regulations on this, as well as on any other subject of legislation, as it shall deem expedient and proper.

The judgment is affirmed.

Chief Justice WAITE did not sit in this case and took no part in the decision.

Hornbuckle v. Toombs, No. 139. Davis v. Bilsland, No. 141. Hirshfield v. Griffith, No. 208.

DAVIS and STRONG, JJ.—We dissent from the judgments in these cases, for the reason that this court has several times decided that claims at law and claims in equity cannot be united in one action, even in the territorial courts. And we think, if a change in the rule is to be made, it should be made by congress.

JUDGMENT AFFIRMED.

Descent and Distribution of Property Among the Wyandott Indians.

PAMELA GRAY v. JACOB COFFMAN *et al.*

United States Circuit Court, District of Kansas, June Term, 1874.

Before DILLON, Circuit Judge.

1. **Wyandott Indians—Construction of Treaty.**—The treaty of March 17, 1842 (7 Stats. at Large, 608, § 14), and of January 31, 1855 (10 Ib. 1159), between the United States and the Wyandott Indians in respect to the grant to members of the tribe, of a right to select and locate a section of land, construed.

2. ——. ——. **Reservations.**—The treaty of 1855 requires the patent to issue in the *name of the reservee*, though, if he be dead, the selection may be made by his "heirs or legal representatives," to be determined by the laws, usages and customs of the tribe. Whether a patent issued in the name of the heirs of the reservee is void, *quære?*

3. ——. **Indian Wills—Devise of "Float."**—A will of the right to this "float" made and executed according to the laws of the tribe, and proved and allowed by the proper tribunal of the tribe, is valid and will be respected by the civil courts. See Mackey v. Coxe, 18 How. 100.

4. **Relation of the Wyandott Indians** to the civil laws of the territory of Kansas, in respect to the disposition of property before and after the treaty of 1855, considered.

This is an action of ejectment for lands situate in Lyon county, in the state of Kansas. The case was tried upon testimony submitted to the court, a jury having been waived. The evidence was voluminous, but the material facts sufficiently appear in the opinion of the court.

R. M. Ruggles and *Clough & Wheat*, for the plaintiff; *Wilson Shannon*, *W. P. Montgomery*, and *E. S. Waterbury*, for the defendant.

DILLON, Circuit Judge.—To determine the title to the land here in controversy involves the necessity of deciding several novel and highly interesting questions.

The plaintiff claims title under a patent dated the 3d day of May, 1861, reciting the treaties of 1842 and 1855, below mentioned, between the United States and the Wyandott nation of Indians, and which patent was issued to the heirs of John Hicks. John Hicks was a Wyandott Indian.

It is necessary briefly to refer to the history of the Wyandott tribe and their removal to Kansas. In 1825 the Kansas Indians ceded, with the exception of a limited reservation, this country to the United States. 7 Stats. at Large, 244. In 1830 congress adopted the policy of causing Indian tribes residing east of the Mississippi to be removed to specified reservations west of the Missouri. 4 Stats. at Large, 411. The Wyandott Indians were the last tribe in Ohio which ceded their reservations in that state to the United States. This was done in 1842 by the treaty of Upper Sandusky, of March 17th of that year. 7 Stats. at Large, 608. By the 14th section of that treaty, the United States agree to grant to the above named John Hicks, to his heirs, and to thirty-five other specified persons of the Wyandott nation, one section of land: "The land hereby granted to be selected by the grantees, surveyed and patented at the expense of the United States, but never to be *conveyed* by them or their heirs without the permission of the president of the United States."

The next year, 1843, the Wyandott Indians, including John Hicks, removed to their reservation in Kansas. Here he lived with the tribe until 1853, when he died. On the 10th day of January, 1853, a short time before his death, he made his last will in writing. It was drawn up with all the usual formalities of such instruments, by Governor William Walker, an educated Wyandott Indian, attested by him and signed by the testator. The third clause of this will is in these words: "I will and bequeath unto my sons, Francis A. Hicks, and John Hicks, Jr., the section of land granted to me by the treaty of Upper Sandusky, dated March 17, 1842." This instrument is produced and bears upon it this endorsement: "The within will and testament was read in open court, and allowed probate and ordered recorded. Wyandott Council, February 16, 1853."

JOHN D. BROWN, Principal Chief.

'JOEL WALKER, Clerk *pro tem.*"

It is indisputably established by evidence *aliunde* that the will was presented to the Wyandott Council at that date, and was regularly allowed by it as the will of John Hicks, Sr.

These devisees, John Hicks, Jr., and Francis A. Hicks, were the only living children of John, Sr., but there were then living grandchildren by two of his deceased children.

On the 31st day of January, 1855 (10 Stats. at Large 1159), another treaty was made with the Wyandott Indians, which was ratified March 1st of that year. The first article states that "The Wyandott Indians having become sufficiently advanced in civilization, and desirous of becoming citizens, it is hereby agreed and stipulated that their organization and their relations with the United States as an Indian tribe, shall be dissolved and terminated on the ratification of this agreement, except so far as the further and temporary continuance of the same may be necessary in the execution of some of the stipulations herein; and from and after the date of such ratification the said Wyandott Indians, and each and every one of them, except as hereafter provided, shall be deemed and are hereby declared to be citizens of the United States, to all intents and purposes; and shall be entitled to all the rights, privileges and immunities of such citizens; and shall in all respects be subject to the laws of the United States and the territory of Kansas, in the same manner as other citizens of said territory; and the jurisdiction of the United States and of said territory shall be extended over the Wyandott country in the same manner as over other parts of said territory." Then follows a provision excepting, for the time, from the above provision as to citizenship, such Indians as may apply for it.

The treaty makes provision for the survey, platting and partition of their reservation, and for lists of the members of the tribe, divided into three classes: 1st. Of those who are able to control and manage their affairs and interests. 2d. Those who are not. 3d. Orphans, idiots and insane persons. Lists of the second and third classes were to be furnished by the Wayandott council, under whose supervision and guardianship the treaty continues them.

The eighth article of the treaty defines the persons entitled to money and lands thereunder "to be such only as are actual members of the Wyandott nation, *their heirs and representatives*, and as are entitled to share in the property and funds of the said nation, *accotding to the laws, usages and customs thereof.*"

Article 9, which is important, is in these words: "Each of the individuals to whom reservations are granted by the 14th article of the treaty of March 17, 1842 (of Upper Sandusky), or *their heirs or legal representatives*, shall be permitted to select and locate said reservations, on any government land west of Missouri and Iowa subject to pre-emption and settlement; said reservations to be *patented* by the United States *in the names of the reservees*; and

the reservees, their *heirs and proper representatives* shall have the unrestricted right to sell and convey the same; but in cases where any of the said reserves may not be sufficiently prudent and competent to manage their affairs in a proper manner, which shall be determined by the Wyandott council, or where any of them have died, leaving minor heirs, the said council shall appoint proper and discreet persons to act for such imcompetent persons and minor heirs in the sale of the reservations, and the custody and management of the proceeds thereof; the persons so appointed to have full authority to sell and dispose of the reservations, and to make and execute a good and valid title thereto."

On the 30th day of May, 1854—the year preceding this treaty—congress passed the act organizing the territory of Kansas, but previous to this the public lands therein had been thrown open to pre-emption and settlement, and these Wyandott "floats," by which 640 acres could be secured for town sites, instead of 320 acres, were in great request. Francis A. Hicks, one of the devisees of the John Hicks' "float," died August 16, 1855, a few months after the treaty of that year, leaving children and grandchildren. He made a will on the 7th day of August, 1855, and therein directs "the one-half of the section of land willed to him by his father, under the treaty of March 17, 1842, to be sold, and the avails thereof to be applied to the liquidation of his debts and liabilities," and appoints Joel Walker his executor.

Now at the date of the death of Francis A. Hicks, on the 16th day of August, 1855, no statute of descents or will had yet been passed by the territorial legislature of Kansas. The council still continued to act, and the will of Francis A. Hicks was admitted to probate September 25, 1855, the executor gave bond, and was authorized by the council to act as such. Subsequently, to-wit, January 5, 1863, the will was presented to the regular probate court of Wyandott county, and proved and allowed, but without any notice being published or otherwise given, so far as appears of record. Joel Walker, the executor of Francis A. Hicks, pursuant to directions in his will, sold the testator's undivided half of this 640 acre "float" to Jacob Ulrich for $1,000, and reduced the contract to writing. Ulrich located the float on the land in question, which was approved, and the patent issued, as above mentioned, May 3, 1861, *to the heirs of John Hicks, Sr.* Subsequently, conveyance was made to Ulrich's estate, for this interest, and the heirs of Ulrich conveyed the land in question to the defendant.

The plaintiff claims a title through conveyances from granchildren of John Hicks, Sr., who, if his will and the will of Francis A. Hicks are valid, had no title. In other words, the right of the plaintiff to recover is based upon the proposition that these two wills are nullities; that, though made, executed and probated according to the laws, customs and usages of the Wyandott nation of Indians, to which they belonged, these instruments have, in law, no legal effect in determining the rights of the parties.

The Wyandott Indians, before their removal from Ohio, had adopted a written constitution and laws, and among others, laws relating to descent and wills. These are in the record, and are shown to have been copied from the laws of Ohio, and adopted by the Wyandott tribe, with certain modifications, to adapt them to their customs and usages. One of these modifications, was that only living children should inherit, excluding the children of deceased children, or grand children.

The Wyandott council, which is several times referred to in the treaty of 1855, was an executive and judicial body, and had power, under the laws and usages of the nation, to receive proof of wills, etc.; and this body continued to act, at least to some extent, after the treaty of 1855.

The first question arises under the patent. The treaty of 1855 required the patent to be issued in the *name of the reservee.* The patent of May 3, 1861, was in fact issued not to John Hicks, the reservee, but to the *heirs of John Hicks.* If it had been issued in the name of John Hicks, though he was then dead, it would, under the act of 1836, have inured to his heirs, devisees or assignees, (5 Stats. at Large, 31.) What is the effect of its being issued as it was to the heirs of John Hicks? The plaintiff contends that the patent was rightfully issued, and that under it the heirs of John Hicks take by *purchase.* That to ascertain who are his heirs, resort must be had, not to Indian laws, but to the laws of Kansas at the time, and that the legal effect of the patent is the same as if the children or heirs of John Hicks, Sr., had been named therein, which, if true, would cut off the rights of the creditors, devisees or assignees of John Hicks, Sr.

On the other hand the defendant insists, inasmuch as it is true, that if the patent is valid, the heirs of John Hicks take by purchase, that the patent is void because it was not issued, as the treaty specifically required, in the name of the reservee.

The issuing of a patent is a ministerial act, and a patent issued without authority is void.

I am inclined to think that the departure of the patent in respect to the name of the grantee from the requirements of the treaty is material, and that the patent is therefore a nullity. The effect of this would be that the legal title is still in the United States, and, of course, the plaintiff could not recover in ejectment.

But this point I leave undetermined, preferring to rest my judgment upon the ground that under the circumstances, the court must give effect to the well established laws, customs, and usages of the Wyandott tribe of Indians in respect to the disposition of property by descent and will.

John Hicks, Jr., had a valuable right given by the treaty of 1842—a right to select and locate 640 acres of land—not land but "a float," or right to land. He died in 1853, within the limits of what afterwards became the territory of Kansas. There is no national law of descent and wills, none regulating the rights of members of Indian tribes. The treaty of 1855 recognizes and provides in several places for the rights of the *heirs or legal representatives* of the reservees under the treaty of 1842. These must mean heirs and legal representatives "according to the laws, usages and customs" of the tribe. See articles 8 and 9 of the treaty of 1855.

The government was aware that between 1842, when the right was given, and 1855, when the second treaty was made, that some of the reservees were dead, and it provided carefully for this contingency by authorizing their *heirs or legal representatives* to select and locate the section of land. It is hardly possible to suppose that congress meant to refer to the law of Missouri territory of 1815, to ascertain who were the heirs or legal representatives of the deceased reservees. There is but one way to determine this and that is by the laws, customs and usages of the tribe. If this is so, then the will of John Hicks, Sr., made and allowed in 1853, was valid and gave the right to his sons, John, Jr., and Francis A. If the will of the elder Hicks is valid, so likewise is the will of Francis A., whose death occurred previous to the enactment of any statute of wills or descents in Kansas, but after the ratification of the treaty of 1855.

The dates are as follows: the treaty was ratified March 1st, 1855; Francis A. Hicks, died August 16, 1855; the territorial statute of Kansas concerning wills was approved August 30, 1855 (Laws of Kansas, 1855, p. 753-761.) The will of Francis A. Hicks was admitted to probate by the Wyandott council Sept. 25, 1855.

If the foregoing views are correct, the will of Francis A. Hicks was valid when he died, because it conformed to the laws and usages of his tribe, and there were no laws of either the United States or the territory of Kansas upon the subject.

Passing the question whether it is necessary to valid action by an executor, under a will, that his appointment should be ratified by some court with probate powers, the only remaining inquiry would be, must Indian wills, after the ratification of the treaty of 1855, be presented to and allowed by the civil tribunals, before

acts done thereunder and authorized thereby, can be treated as valid?

Notwithstanding the broad language of the first article of the treaty of 1855 as to the dissolution of the tribal relation of the Wyandott Indians, and as to their becoming citizens of the United States and subject to its laws and the laws (prospective) of the territory of Kansas, it is evident from the view of the whole treaty that their property rights were regulated by it, and that the Wyandott council, which was a tribunal with executive and judicial functions, was still to continue in force, at least for a time.

Francis A. Hicks died, leaving a will made and executed in due form, according to the laws of the tribe, before there were any laws of Kansas on the subject of the descent of property or of wills. The Wyandott council, with jurisdiction over wills, continued to act.

Wills which would be formal and valid by the laws of usages of the tribe, might be, and probably would be, informal when tested by territorial laws subsequently enacted. The foregoing views find strong, if not, indeed, full support in the case of Mackey v. Coxe, 18 How. 100.

I am of opinion, therefore, that both wills are valid, and that the plaintiff, whose case rests upon the hypothesis of their nullity has no title to the land in controversy. Accordingly, there will be a judgment for the defendant.

JUDGMENT FOR DEFENDANT.

Important Decision under the New Bankrupt Law—Petition must show Requisite Number of Creditors.

In re SCAMMON.

United States District Court, Northern District of Illinois, June 26, 1874.

1. **Bankrupt Act, § 39—Petition must show requisite number of Creditors.**—By the amendment of section 39 of the Bankrupt act recently passed, creditors to the extent of one-fourth in number and one-third in value must petition for the adjudication, and this provision is applied by the act to all cases of involuntary bankruptcy commenced since December 1, 1873: *Held*, that not only in new cases, but in those pending when the amendment took effect, brought since December 1, 1873, the petition must show affirmatively that the requisite number of creditors join in the proceeding.

BLODGETT, J.—By the recent amendment to the bankrupt law, some radical changes are made in the proceedings of voluntary or compulsory bankruptcy.

The 39th section has been practically repealed, and a new section substituted. By this section, as it now stands amended, various acts are declared acts of bankruptcy, and the law then proceeds to say that any person guilty of said acts, or any of them, "shall be deemed to have committed an act of bankruptcy, and subject to the conditions hereinafter prescribed, and shall be adjudged a bankrupt on the petition of one or more of his creditors, who shall constitute one-fourth thereof at least in number, and the aggregate of whose debts provable under this act amounts to at least one-third of the debts so provable." * * * *

And the provisions of this section shall apply to all cases of compulsory or of involuntary bankruptcy commenced since the 1st day of December, 1873, as well as those commenced hereafter. And in all cases commenced since the first of December, 1873, and prior to the passage of this act, as well as those commenced hereafter, the court shall, *if such allegation as to the number or amount of petitioning creditors be denied by a statement in writing to that effect*, require him to file in court forthwith a full list of his creditors, with their places of residence, and the sums due them respectively, and shall ascertain, upon reasonable notice to the creditors, whether one-fourth in number and one-third in amount have petitioned that the debtor be adjudged bankrupt. * * * *

The question now raised is, whether cases pending, which have been commenced since the first of December last, can proceed without an amendment of the petition, so as to show affirmatively that the requisite number of creditors desire the debtor to be adjudicated bankrupt, or must the debtor in such cases object in the first instance, and file a schedule of his creditors.

There is no doubt in my mind that in new cases the petition must show affirmatively that the requisite number of creditors join in the petition. Not that the creditors petitioning must swear positively that they constitute a fourth in number and a third in value of a debtor's creditors, but they should at least allege it according to their best information and belief, because we all know that debtors frequently misstate the amount of the debts to their creditors, and creditors have no means in the first instance of verifying the truth of the debtors' statements to them. So that I think an allegation that those petitioning constitute a fourth in number of the creditors, and a third in value of the provable debts, would make a good *prima facie* case, so far as this clause is concerned. If the debtor comes in and denies this allegation, then he can be ruled to file a correct list of his creditors, with their residences and the amount due them respectively, and a time is given in which to obtain the report of the requisite number of them to the proceeding.

The evident spirit and intent of the amendment is that all cases pending, commenced since the 1st of December last, shall conform to, and proceed upon the requirements of the law in the same manner as new cases. The language is: "If the *allegation as to the number or amount of petitioning creditors be denied by the debtor.*" And this is declared to apply as well to pending cases as to those hereinafter commenced. Now, by all the analogies from the rules of pleading, a party is not required to deny an *allegation* which has not been made. It seems to me it would be basurd to require a debtor to come in and deny the *allegation* that a fourth in number and third in amount of his creditors had not joined in the proceedings against him when the record contained no such *allegation*. The creditors should first make the allegation, and then it will be time for the debtor to deny it and furnish a correct list of his creditors.

Nor do I see that there is any hardship in this. It being clear that the proceedings cannot go on without the assent of the requisite number of creditors, their assent seems to me indispensable to enable the court to retain jurisdiction of the case, and the petitioning creditor may as well amend his petition in the first instance by obtaining the assent of the requisite number as to require the debtor to exhibit his schedule. As I construe the law, the debtor is not obliged to give a schedule of his creditors until a *prima facie* case is made against him. Certainly a debtor against whom a new petition is filed cannot be compelled to disclose the names and residences of his creditors, and amounts due to each without such *prima facie* case being made, and I do not see why any different rule should apply to one against whom proceedings were pending when the law passed.

I therefore conclude that in all cases pending which have been commenced since the first of December last, the petitioning creditor should take steps to secure the joining of a fourth in number and third in amount of the creditors within some reasonable time, and that the debtors are entitled to a rule that unless the requisite number of creditors do so join within such time as the rule may require, the proceeding shall be dismissed.

This saves the rights of creditors in all cases when the limitations of the law would apply if the petitions should be dismissed and new proceedings commenced.

—JUDGE DANIELS, in accordance with the verdict previously rendered, has sentenced the Brooklyn charity commissioners to pay a fine of two hundred dollars each. The Herald says: "The punishment is a gentle one, but it brands the men for all time to come as offenders against the law, and prevents them forever from holding office. Judge DANIELS throughout this trial has comported himself well, and, in spite of all the influence which was brought to bear upon him, he has been true to himself and faithful to the people. A pure and incorruptible bench is the best safeguard of the Republic."

The New Bankrupt Act.

§ 1. Receiver to take possession of property and carry on business, when.
§ 2. Amends § 1 of act of 1867; suits in state courts to collect bankrupt's debts.
§ 3. Amends § 2 of act of 1867.
§ 4. Sales by assignee; notice; supervisory power of court over; assignee's account of expenditures; removal of assignee for neglect of duties, etc.; assignee fraudulently or corruptly selling, subject to removal, forfeiture of fees, fine and imprisonment; punishment of his confederates; reports of assignee; quarterly settlements of assignee—to account for interest and benefits—oath to be taken, and penalty for swearing falsely.
§ 5. Amends § 11 of Act of 1867; notice to creditors by publication.
§ 6. Amends § 20 of act of 1867 with reference to offsets.
§ 7. Amends § 21 of Act of 1867; waiver of right of action by creditor.
§ 8. Amends § 26 of act of 1867; bankrupt or other parties competent witnesses.
§ 9. Repeals § 33 of act of 1867; what *per centum* of indebtedness to be covered by assets, and consent of what number of creditors necessary to entitle bankrupt to discharge.
§ 10. Amends § 35 of act of 1867, by reducing periods within which property fraudulently conveyed may be recovered or discharge may be contested respectively to two and three months.
§ 11. Makes other specific amendments to § 35 of the act of 1867.
§ 12. Amends § 39 of the act of 1867; what shall be deemed acts of bankruptcy; number and amount of creditors who must join in petition; within what time petition to be brought; proceedings with reference to the number and amount of petitioning creditors; effect of payment or conveyance where proceeding is arrested on proof that the requisite number and amount of creditors have not joined; what creditors counted in estimating requisite number.
§ 13. Amends § 40 of act of 1867, as to number and amount of creditors.
§ 14. Amends § 41 of Act of 1867; trial by jury of facts set forth in petition; dismissal; discontinuance.
§ 15. Amends §§ 11 and 42 of act of 1867; inventory and valuation.
§ 17. Supplements § 43 of Act of 1867; compositions with creditors.
§ 18. Fees and emoluments; register, clerk, etc., not to be interested in or of counsel for, estates, etc.
§ 19. Annual report of marshal, register, assignee and clerk.
§ 20. Proof of debts may be taken before notary public.
§ 21. General repealing clause.

[General Nature, No. 74.]

An act to amend and supplement an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, and for other purposes.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled*, That the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, be, and the same is hereby, amended and supplemented as follows: That the court may in its discretion, on sufficient cause shown, and upon notice and hearing, direct the receiver or assignee to take possession of the property, and carry on the business of the debtor, or any part thereof, under the direction of the court, when, in its judgment, the interest of the estate as well as of the creditors will be promoted thereby, but not for a period exceeding nine months from the time the debtor shall have been declared a bankrupt: *Provided*, That such order shall not be made until the court shall be satisfied that it is approved by a majority in value of the creditors.

Sec. 2. That section one of said act be, and it is hereby amended by adding thereto the following words: "*Provided*, That the court having charge of the estate of any bankrupt may direct that any of the legal assets or debts of the bankrupt, as contradistinguished from equitable demands, shall, when such debt does not exceed $500, be collected in the courts of the state where such bankrupt resides having jurisdiction of claims of such nature and amount."

Sec. 3. That section two of said act be, and it hereby is, amended by striking out, in line ten, the words, "the same," and inserting the word "any;" and by adding next after the words "adverse interest," in line twelve, the words "or owing any debt to such bankrupt."

Sec. 4. That unless otherwise ordered by the court, the assignee shall sell the property of the bankrupt, whether real or personal, at public auction, in such parts or parcels, and at such times and places as shall be best calculated to produce the greatest amount with the least expense. All notices of public sales under this act by any assignee or officer of the court shall be published once a week, for three consecutive weeks, in the newspaper or newspapers, to be designated by the judge, which, in his opinion, shall be best calculated to give general notice of the sale. And the court on the application of any party in interest, shall have complete supervisory power over such sales, including the power to set aside the same and to order a re-sale, so that the property sold shall realize the largest sum. And the court may, in its discretion, order any real estate of the bankrupt, or any part thereof, to be sold for one-fourth cash at the time of sale, and the residue within eighteen months, in such instalments as the court may direct, bearing interest at the rate of 7 per centum per annum, and secured by proper mortgage or lien upon the property so sold. And it shall be the duty of every assignee to keep a regular account of all moneys received or expended by him as such assignee, to which account every creditor shall at reasonable times have free access. If any assignee shall fail or neglect to well and faithfully discharge his duties in the sale or disposition of property as above contemplated, it shall be the duty of the court to remove such assignee, and he shall forfeit all fees and emoluments to which he might be entitled in connection with such sale. And if any assignee shall, in any manner, in violation of his duty aforesaid, unfairly or wrongfully sell or dispose of, or in any manner fraudulently or corruptly combine, conspire, or agree with any person or persons, with intent to unfairly or wrongfully sell or dispose of the property committed to his charge, he shall, upon proof thereof, be removed, and forfeit all fees or other compensation for any and all services in connection with such bankrupt's estate, and, upon conviction thereof before any court of competent jurisdiction, shall be liable to a fine of not more than $10,000, or imprisonment in the penitentiary for a term of not exceeding two years, or both fine and imprisonment, at the discretion of the court. And any person so combining, conspiring, or agreeing with such assignee for the purpose aforesaid shall, upon conviction, be liable to a like punishment. That the assignee shall report, under oath, to the court at least as often as once in three months, the condition of the estate in his charge, and the state of his accounts in detail, and at all other times when the court, on motion or otherwise, shall so order. And on any settlement of the accounts of any assignee he shall be required to account for all interest, benefit or advantage received, or in any manner agreed to be received, directly or indirectly, from the use, disposal, or proceeds of the bankrupt's estate. And he shall be required, upon such settlement, to make and file in court an affidavit declaring, according to the truth, whether he has or has not, as the case may be, received, or is or is not, as the case may be, to receive, directly or indirectly, any interest, benefit, or advantage from the use or deposit of such funds; and such assignee may be examined orally upon the same subject, and if he shall willfully swears falsely, either in such affidavit or examination, or to his report provided for in this section, he shall be deemed to be guilty of perjury, and, on conviction thereof, be punished by imprisonment in the penitentiary not less than one and not more than five years.

Sec. 5. That section 11 of said act be amended by striking out the words ,' as the warrant specifies" where they first occur, and inserting the words "as the marshal shall select, not exceeding two;" and inserting after the word "specifies," where it last occurs, the words "But whenever the creditors of the bankrupt are so numerous as to make any notice now required by law, to them, by mail or otherwise, a great and disproportionate expense to the estate, the court may, in lieu thereof, in its discretion, order such notice to be given by publication in a newspaper or newspapers, to all such creditors whose claims, as reported, do not exceed the sums, respectively, of fifty dollars."

Sec. 6. That the first clause of section 20 of said act be amended by adding, at the end thereof, the words "or in cases of compulsory bankruptcy, after the act of bankruptcy upon or in respect of which the adjudication shall be made, and with a view of making such set-off."

Sec. 7. That section 21 of said act be amended by inserting the following words in line six, immediately after "thereby:" "But a creditor proving his debt or claim shall not be held to have waived his right of action or suit against the bankrupt, where a discharge has been refused, or the proceedings have been determined without a discharge."

Sec. 8. That the following words shall be added to section 26 of said act: "That in all causes and trials arising or ordered under this act, the alleged bankrupt, and any party thereto, shall be a competent witness."

Sec. 9. That in cases of compulsory or involuntary bankruptcy, the provisions of said act, and any amendment thereof, or of any supplement thereto, requiring the payment of any proportion of the debts of the bankrupt, or the assent of any portion of his creditors, as a condition of his discharge from his debts, shall not apply; but he may, if otherwise entitled thereto, be discharged by the court in the same manner and with the same effect as if he had paid such per centum of his debts, or as if the required proportion of his creditors had assented thereto. And in cases of voluntary bankruptcy, no discharge shall be granted to a debtor whose assets shall not be equal to 30 per centum of the claims proved against his estate, upon which he shall be liable as principal debtor, without the assent of at least one-fourth of his creditors in number, and one-third in value; and the provision in section 33 of said act of March 2, 1867, requiring 50 per centum of such assets, is hereby repealed.

Sec. 10. That in cases of involuntary or compulsory bankruptcy, the period of four months mentioned in section 35 of the act to which this is an amendment, is hereby changed to two months; but this provision shall not take effect until two months after the passage of this act. And in the cases afore-

said, the period of six months mentioned in said section 35 is hereby changed to three months; but this provision shall not take effect until three months after the passage of this act.

Sec. 11. That section 35 of said act be, and the same is hereby amended, as follows: First, after the word "and" in line eleven, insert the word "knowing;" secondly, after the word "attachment" in the same line, insert the words "sequestration, seizure;" thirdly, after the word "and," in line twenty, insert the word "knowing." And nothing in said section 35 shall be construed to invalidate any loan of actual value, or the security therefor, made in good faith upon a security taken in good faith on the occasion of the making of such loan.

Sec. 12. That section 39 of said act of March 2, 1867, be amended so as to read as follows:

"Sec. 39. That any person residing, and owing debts, as aforesaid, who, after the passage of this act, shall depart from the state, district, or territory of which he is an inhabitant, with intent to defraud his creditors; or, being absent, shall, with such intent, remain absent; or shall conceal himself to avoid the service of legal process in any action for the recovery of a debt or demand provable under this act; or shall conceal or remove any of his property to avoid its being attached, taken, or sequestered on legal process; or shall make any assignment, gift, sale, conveyance, or transfer of his estate, property, rights, or credits, either within the United States or elsewhere, with intent to delay, defraud, or hinder his creditors; or who has been arrested and held in custody under or by virtue of mesne process or execution, issued out of any court of the United States, or of any state, district, or territory within which such debtor resides or has property, founded upon a demand in its nature provable against a bankrupt's estate under this act, and for a sum exceeding $100, and such process is remaining in force and not discharged by payment, or in any other manner provided by the law of the United States or of such state, district, or territory, applicable thereto, for a period of 20 days, or has been actually imprisoned for more than 20 days in a civil action founded on contract for the sum of $100 or upward; or who, being bankrupt or insolvent, or in contemplation of bankruptcy or insolvency, shall make any payment, gift, grant, sale, conveyance, or transfer of money or other property, estate, rights, or credits, or confess judgment, or give any warrant to confess judgment, or procure his property to be taken on legal process, with intent to give a preference to one or more of his creditors, or to any person or persons who are or may be liable for him as indorsers, bail, sureties, or otherwise, or with the intent, by such disposition of his property, to defeat or delay the operation of this act; or who, being a bank, banker, broker, merchant, trader, manufacturer, or miner, has fraudulently stopped payment; or who, being a bank, banker, broker, merchant, trader, manufacturer, or miner, has stopped or suspended and not resumed payment, within a period of forty days, of his commercial paper (made or passed in the course of his business as such), or who, being a bank or banker, shall fail for forty days to pay any depositor upon demand of payment lawfully made, shall be deemed to have committed an act of bankruptcy, and subject to the conditions hereinafter prescribed, shall be adjudged a bankrupt on the petition of one or more of his creditors, who shall constitute one-fourth thereof, at least, in number, and the aggregate of whose debts provable under this act amounts to at least one-third of the debts so provable; *Provided*, That such petition is brought within six months after such act of bankruptcy shall have been committed. And the provisions of this section shall apply to all cases of compulsory or involuntary bankruptcy commenced since the 1st day of December, 1873, as well as to those commenced hereafter. And in all cases commenced since the 1st day of December, 1873, and prior to the passage of this act, as well as those commenced hereafter, the court shall, if such allegations as to the number or amount of petitioning creditors be denied by the debtor, by a statement in writing to that effect, require him to file in court forthwith a full list of his creditors, with their places of residence and the sums due them respectively, and shall ascertain, upon reasonable notice to the creditors, whether one-fourth in number and one-third in amount thereof, as aforesaid, have petitioned that the debtor be adjudged a bankrupt. But if such debtor, shall, on the filing of the petition, admit in writing that the requisite number and amount of creditors have petitioned, the court (if satisfied that the admission was made in good faith), shall so adjudge, which judgment shall be final, and the matter proceed without further steps on that subject. And if it shall appear that such number and amount have not so petitioned, the court shall grant reasonable time, not exceeding in cases heretofore commenced, twenty days, and in cases hereafter commenced, ten days, within which other creditors may join in such petition. And if at the expiration of such time so limited, the number and amount shall comply with the requirements of this section, the matter of bankruptcy may proceed; but if, at the expiration of such limited time, such number and amount shall not answer the requirements of this section, the proceedings shall be dismissed, and, in cases hereafter commenced, with costs. And if such person shall be adjudged a bankrupt, the assignee may recover back the money or property so paid, conveyed, sold assigned or transferred contrary to this act; *Provided*, That the person receiving such payment or conveyance had reasonable cause to believe that the debtor was insolvent, and knew that a fraud on this act was intended; and such person, if a creditor, shall not, in cases of actual fraud on his part, be allowed to prove for more than a moiety of his debt. And this limitation on the proof of debts shall apply to cases of voluntary as well as involuntary bankruptcy; and the petition of creditors under this section may be sufficiently verified by the oaths of the first five signers thereof, if so many there be. And if any of said first five signers shall not reside in the district in which such petition is to be filed, the same may be signed and verified by the oath or oaths of the attorney or attorneys, agent or agents, of such signers. And in computing the number of creditors, as aforesaid, who shall join in such petition, creditors whose respective debts do not exceed $250 shall not be reckoned. But if there be no creditors whose debts exceed said sum of $250, or if the requisite number of creditors holding debts exceeding $250 fail to sign the petition, the creditors having debts of a less amount shall be reckoned for the purposes aforesaid."

Sec. 13. That section 40 of said act be amended by adding at the end thereof the following words: "And if, on the return day of the order to show cause as aforesaid, the court shall be satisfied that the requirement of section 39 of said act as to the number and amount of petitioning creditors has been complied with, or if, within the time provided for in section 39 of this act, creditors sufficient in number and amount shall sign such petition so as to make a total of one-fourth in number of the creditors and one-third in the amount of the provable debts against the bankrupt, as provided in said section, the court shall so adjudge, which judgment shall be final; otherwise it shall dismiss the proceedings, and, in cases hereafter commenced, with costs."

Sec 14. That section 41 of said act be amended as follows: After the word "bankruptcy," in line eight, strike out all of said section and insert the words "Or, at the election of the debtor, the court may, in its discretion, award a *venire facias* to the marshal of the district, returnable within ten days before him for the trial of the facts set forth in the petition, at which time the trial shall be had, unless adjourned for cause. And unless, upon such hearing or trial, it shall appear to the satisfaction of said court, or of the jury, as the case may be, that the facts set forth in said petition are true, or if it shall appear that the debtor has paid and satisfied all liens upon his property, in case the existence of such liens was the sole ground of the proceeding, the proceeding shall be dismissed, and the respondent shall recover costs; and all proceedings in bankruptcy may be discontinued on reasonable notice and hearing, with the approval of the court, and upon the assent, in writing, of such debtor, and not less than one-half of his creditors in number and amount; or, in case all the creditors and such debtor assent thereto such discontinuance shall be ordered and entered; and all parties shall be remitted, in either case, to the same rights and duties existing at the date of the filing of the petition for bankruptcy, except so far as such estate shall have been already administered and disposed of. And the court shall have power to make all needful orders and decrees to carry the foregoing provision into effect."

Sec. 15. That section 11 of said act be amended by inserting the words "and valuation" after the word "inventory" in the twenty-first line; and taht section 42 of said act be amended by inserting the words "and valuation" after the word "inventory" in the fifteenth line.

Sec. 16. That section 49 of said act be amended by striking out, after the word "the," in line five, the words "supreme courts," and inserting in lieu thereof "district courts," and in line six, after the word "states," inserting the words "subject to the general superintendance and jurisdiction conferred upon circuit courts by section 2 of said act."

COMPOSITION WITH CREDITORS.

Sec. 17. That the following provisions be added to section 43 of said act: That, in all cases of bankruptcy now pending, or to be hereafter pending, by or against any person, whether an adjudication in bankruptcy shall have been had or not, the creditors of such alleged bankrupt may, at a meeting called under the direction of the court, and upon not less than ten days notice to each known creditor of the time, place, and purpose of such meeting, such notice to be personal or otherwise, as the court may direct, resolve that a composition, proposed by the debtor, shall be accepted in satisfaction of the debts due to them from the debtor. And such resolution shall, to be operative, have been passed by a majority in number and three-fourths in value of the creditors of the debtor assembled at such meeting either in person or by proxy, and shall be confirmed by the signatures thereto of the debtor and two-thirds in number and one-half in value of all the creditors of the debtor. And in calculating a majority for the purposes of a composition under this section, creditors whose debts amount to sums not exceeding fifty dollars shall be reckoned in the majority in value, but not in the majority in number; and

the value of the debts of secured creditors above the amount of such security, to be determined by the court, shall, as nearly as circumstances admit, be estimated in the same way. And creditors whose debts are fully secured shall not be entitled to vote upon or to sign such resolution without first relinquishing such security for the benefit of the estate.

The debtor, unless prevented by sickness or other cause satisfactory to such meeting, shall be present at the same, and shall answer any enquiries made of him; and he, or, if he is so prevented from being at such meeting, some one in his behalf, shall produce to the meeting a statement showing the whole of his assets and debts, and the names and addresses of the creditors to whom such debts respectively are due.

Such resolution, together with the statement of the debtor, as to his assets and debts, shall be presented to the court; and the court shall, upon notice to all the creditors of the debtor of not less than five days, and upon hearing, enquire whether such resolution has been passed in the manner directed by this section; and, if satisfied that it has been so passed, it shall, subject to the provisions hereinafter contained, and upon being satisfied that the same is for the best interest of all concerned, cause such resolution to be recorded and statement of assets and debts to be filed; and until such record and filing shall have taken place, such resolution shall be of no validity. And any creditor of the debtor may inspect such record and statement at all reasonable times.

The creditors may, by resolution passed in the manner and under the circumstances aforesaid, add to or vary the provisions of, any composition previously accepted by them, without prejudice to any persons taking interests under such provisions who do not assent to such addition or variation. And any such additional resolution shall be presented to the court in the same manner, and proceeded with in the same way and with the same consequences as the resolution by which the composition was accepted in the first instance. The provisions of a composition accepted by such resolution in pursuance of this section shall be binding on all the creditors whose names and addresses and the amounts of the debts due to whom are shown in the statement of the debtor produced at the meeting at which the resolution shall have been passed, but shall not affect or prejudice the rights of any other creditors.

Where a debt arises on a bill of exchange or promissory note, if the debtor shall be ignorant of the holder of any such bill of exchange or promissory note, he shall be required to state the amount of such bill or note, the date on which it falls due, the name of the acceptor and of the person to whom it is payable, and any other particulars within his knowledge respecting the same; and the insertion of such particulars shall be deemed a sufficient description by the debtor in respect to such debt.

Any mistake made inadvertantly by a debtor in the statement of his debts may be corrected upon reasonable notice, and with the consent of a general meeting of his creditors.

Every such composition shall, subject to priorities declared in said act, provide for a *pro rata* payment or satisfaction, in money, to the creditors of such debtor in proportion to the amount of their unsecured debts, or their debts in respect to which any such security shall have been duly surrendered and given up.

The provisions of any composition made in pursuance of this section may be enforced by the court, on motion made in a summary manner by any person interested, and on reasonable notice; and any disobedience of the order of the court made on such motion shall be deemed to be a contempt of court. Rules and regulations of court may be made in relation to proceedings of composition herein provided for in the same manner and to the same extent as now provided by law in relation to proceedings in bankruptcy.

If it shall at any time appear to the court, on notice, satisfactory evidence, and hearing, that a composition under this section cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, the court may refuse to accept and confirm such composition, or may set the same aside; and, in either case, the debtor shall be proceeded with as a bankrupt in conformity with the provisions of law, and proceedings may be had accordingly; and the time during which such composition shall have been in force shall not, in such case, be computed in calculating periods of time prescribed by said act.

Sec. 18. That from and after the passage of this act the fees, commissions, charges, and allowances, excepting actual and necessary disbursements, of, and to be made by the officers, agents, marshals, messengers, assignees, and registers in cases of bankruptcy, shall be reduced to one-half of the fees, commissions, charges and allowances heretofore provided for or made in like cases *Provided*, That the preceding provision shall be and remain in force until the justices of the Supreme Court of the United States shall make and promulgate new rules and regulations in respect to the matters aforesaid, under the powers conferred upon them by sections 10 and 47 of said act, and no longer, which duties they shall perform as soon as may be. And said justices shall have power under said sections, by general regulations, to simplify and so far as in their judgment will conduce to the benefit of creditors, to consolidate the duties of the register, assignee, marshal, and clerk, and to reduce fees, costs, and charges, to the end that prolixity, delay, and unnecessary expense may be avoided. And no register or clerk of court, or any partner or clerk of such register or clerk of court, or any person having any interest with either in any fees or emoluments in bankruptcy, or with whom such register or clerk of court shall have any interest in respect to any matter in bankruptcy, shall be of counsel, solicitor, or attorney, either in or out of court, in any suit or matter pending in bankruptcy in either the circuit or district court of his district, or in an appeal therefrom. Nor shall they, or either of them, be executor, administrator, guardian, commissioner, appraiser, divider, or assignee of or upon any estate within the jurisdiction of either of said courts of bankruptcy; nor be interested, directly or indirectly, in the fees or emoluments arising from either of said trusts. And the words "except such as are established by this act or by law," in section 10 of said act, are hereby repealed.

Sec. 19. That it shall be the duty of the marshal of each district, in the month of July of each year, to report to the clerk of the district court of such district, in a tabular form, to be prescribed by the justices of the Supreme Court of the United States, as well as such other or further information as may be required by said justices,

First, the number of cases in bankruptcy, in which the warrant prescribed in section 11 of said act has come to his hands during the year ending June 30, preceding;

Secondly, how many such warrants were returned, with the fees, costs, expenses, and emoluments thereof, respectively and separately;

Thirdly, the total amount of all other fees, costs, expenses, and emoluments, respectively and separately, earned or received by him during such year from or in respect of any matter in bankruptcy;

Fourthly, a summarized statement of such fees, costs and emoluments, exclusive of actual disbursements in bankruptcy, received or earned for such year;

Fifthly, a summarized statement of all actual disbursements in such cases for such year.

And in like manner every register shall, in the same month and for the same year, make a report to such clerk of,

First, the number of voluntary cases in bankruptcy coming before him during said year;

Secondly, the amount of assets and liabilities, as nearly as may be, of the bankrupts;

Thirdly, the amount and rate per centum of all dividends declared;

Fourthly, the disposition of all such cases;

Fifthly, the number of compulsory cases in bankruptcy coming before him in the same way;

Sixthly, the amount of assets and liabilities, as nearly as may be, of such bankrupts;

Sevently, the disposition of all such cases;

Eighthly, the amounts and rate per centum of all dividends declared in such cases;

Ninthly, the total amount of fees, charges, costs, and emoluments of every sort, received or earned by such register during said year in each class of cases above stated.

And in like manner, every assignee shall, during said month, make like return to such clerk of,

First, the number of voluntary and compulsory cases, respectively and separately, in his charge during said year;

Secondly, the amount of assets and liabilities therein, respectively and separately;

Thirdly, the total receipts and disbursements therein, respectively and separately;

Fourthly, the amount of dividends paid or declared, and the rate per centum thereof, in each class, respectively and separately;

Fifthly, the total amount of all his fees, charges, and emoluments, of every kind therein, earned or received;

Sixthly, the total amount of expenses incurred by him for legal proceedings and counsel fees;

Seventhly, the disposition of the cases respectively;

Eighthly, a summarized statement of both classes as aforesaid.

And in like manner the clerk of said court, in the month of August in each year, shall make up a statement for such year, ending June 30th, of,

First, all cases in bankruptcy pending at the beginning of the said year;

Secondly, all of such cases disposed of;

Thirdly, all dividends declared therein;

Fourthly, the number of reports made from each assignee therein;

Fifthly, the disposition of all such cases;

Sixthly, the number of assignee's accounts filed and settled;

Seventhly, whether any marshal, register, or assignee has failed to make and file with such clerk the reports by this act required, and, if any have failed to make such reports, their respective names and residences.

And such clerk shall report in respect of all cases begun during said year.

And he shall make a classified statement, in tabular form, of all his fees, charges, costs, and emoluments, respectively, earned or accrued during said year, giving each head under which the same accrued, and also the sum of all moneys paid into and disbursed out of court in bankruptcy, and the balance in hand or on deposit.

And all the statements and reports herein required shall be under oath, and signed by the persons respectively making the same.

And said clerk shall, in said month of August, transmit every such statement and report so filed with him, together with his own statement and report aforesaid, to the attorney-general of the United States.

Any person who shall violate the provisions of this section shall, on motion made under the direction of the attorney-general, be by the district court dismissed from his office, and shall be deemed guilty of a misdemeanor, and, on conviction thereof, be punished by a fine of not more than $500, or by imprisonment not exceeding one year.

Sec. 20. That in addition to the officers now authorized to take proof of debts against the estate of a bankrupt, notaries public are hereby authorized to take such proof, in the manner and under the regulations provided by law; such proof to be certified by the notary and attested by his signature and official seal.

Sec. 21. That all acts and parts of acts inconsistent with the provisions of this act, be, and the same are hereby repealed.

Approved June 22, 1874.

Correspondence — An American Lawyer in London—English Courts and Lawyers.

LONDON, May, 1874.

EDITORS CENTRAL LAW JOURNAL:—It seems me there is no lack of business among the London lawyers. Apparently, here as elsewhere, so far as I know, they are among the busiest of men. London is a great city. According to the census of 1871, its population then was upwards of three and a quarter millions. It is said the increase is at the rate of about 42,000 per annum, which would give a present population of about three and a half millions. Then there are at all times, but especially at this season of the year, a great many strangers in the city not included in the census, a considerable part of whom are here on busines; so that while it would not be quite correct to say the number of people here is infinite, it is, at least, pretty safe to say, it is indefinite. And when it is said, by some one who knows little, there are in London, 3,000 attorneys and 3,900 barristers, to "aggravate or settle the little differences," it ought to be added by some one who knows more and better, that a large proportion of the population of London is engaged in traffic, and that, as in the United States, so here in England, to no profession or class are the people so much indebted for their well-being as to lawyers.

The leading lawyers here are usually occupied in some one of the courts or at chambers or before some master in some trial, hearing or examination from ten to four. The two hours from four to six are usually devoted to office consultations, mostly by prior appointment. The house of parliament usually sits at six, and such lawyers as are members attend such sittings at that hour. These sittings sometimes last into the morning. Most lawyers of note belong to some club. The principle clubs are about forty in number. One of them, it is said, has two thousand members; several others have nearly as many. Most of the club houses are delightfully located; they are generally very large, and sumptuously fitted and furnished. Membership, I should think, must be expensive; but such lawyers as are members are doubtles in the receipt of large incomes. The salary of the lord high chancellor is £10,000, equal to $50,000 in gold; the salary of the chief justice of the Queen's Bench is £8,000; that of the lord chief baron of the Exchequer, £7,000; and that of the lord chief justice of the Common Pleas, £7,000. Yet I am told the fees of some of the London lawyers in full practice aggregate annually more than the largest of these sums. But such cases I think must be rare, and will be found only where laborious and steady application is conjoined with great ability. The receipts of most lawyers are doubtless considerably less than the smallest of these sums. Yet I believe, as a rule, the lawyers in London are better paid than lawyers in the leading cities of the United States for like service. Mr. Webster said his observation led him to believe that most good lawyers in America worked hard, lived well and died poor. I should not be surprised to learn that such was the history of lawyers here.

There are now four courts sitting at Westminster Hall—the Court of Chancery, the Queen's Bench, Common Pleas, and Exchequer. Besides these, there is the Vice Chancellor's Court, that sits at Lincoln's Inn; the "Crown Cases Reserved Court;" the Court of Appeals in Chancery; the Courts of Probate and Divorce and Matrimonial Causes; the High Court of Admiralty; the London Bankruptcy Court; the Rolls Court; the City and Metropolitan Courts, and some others whose names I do not remember; besides associate judges sitting at chambers, masters' and auditors' hearings, and the like. And over all these, in the last resort, the House of Lords is the court of appeals from the Exchequer, in error; from the Queen's Bench and Common Pleas; from the decrees of the equity courts in England, including appeals in bankruptcy; from the decisions of the courts for matrimonial causes, or petititions for dissolution of marriage; from the orders of the courts of probate, and from the courts of Scotland and Ireland. It is also the court for the trials of impeachments. It sits in its own house, and the Lord High Chancellor of Great Britain, at present the Rt. Hon. ROUNDELL, BARON SELBORNE, presides.

PELHAM.

Book Notice.

BYLES ON BILLS. By the Hon. Sir JOHN BARNARD BYLES, late one of the judges of Her Majesty's Court of Common Pleas. 6th American from the 11th London edition, with notes illustrating the law and practice in the United States, by the Hon. GEORGE SHARSWOOD of the Supreme Court of Pennsylvania. Philadelphia: T. & J. W. Johnson & Co. 1874. pp. 783.

This treatise has a distinctive character among the works on Notes and Bills. The first edition appeared over forty-five years ago, and the eleventh London edition passed under the eye of the venerable author in 1873. When it first appeared the elaborate work of Mr. Chitty was, with the exception of the small volume of Mr. Justice BAYLEY, almost the only one then in use. Mr. Chitty's work is very full, and laboriously collects nearly all the English cases upon the subject which had then been reported; and the purpose of Mr. Justice BYLES was to produce a treatise of a different character, namely, "a plain and brief summary of the practical points relating to bills and notes, supported by a reference to the leading or latest authorities." Whoever examines the work will find abundant evidence that it was written by an experienced and practical hand for practical use. It is not enriched by mere learning and philosophic discussion like the Commentaries of Mr. Justice STORY, nor does it aim, like the treatises of Chitty and Parsons, to supply a library on the subject of Commercial Paper, and to bring into view the fine distinctions with which, on many points of minor consequence the cases abound. A leading point of merit in the work is that it is not too large, and to us its chief value consists in giving, in so excellent and reliable a form, the *condensed essence of the English law* of negotiable paper, by a judge of great ability, and whose performance has maintained it in favor with the profession for near half a century.

Summary of Our Exchanges.

The Chicago Legal News, June 20th, publishes Merchants' Ins. Co. v. Baring, Supreme Court U. S., holding that maritime liens constitute an insurable interest. Also, Burke v. Tigre, same court, relating to the question when the functions of the Provisional Court of Louisiana cease—in other words, when the war ceased and civil authority was restored in that state. Also the opinion of Chief Justice WAITE, sitting in the Eastern Virginia Circuit Court, in the case of Daniel Deckert, a bankrupt, holding that the amendatory bankrupt act of 1873 is unconstitutional in so far as it exempts against the creditors of a bankrupt a different amount of property in one state from the amount it exempts in another. Also, The People v. Chicago and Alton R. R. Co., U. S. Circuit Court, Southern District of Illinois, DAVIS, DRUMMOND and TREAT, JJ., which involves a construction of the act of congress of April 20, 1871, being the act to enforce the 14th amendment, relative to the removal of causes from the state courts to the federal courts.

The state commenced a prosecution in its own name against the railroad company, a corporation of the state, for a violation of the state act of May 2

1873, in the Circuit Court of Sangamon County. After the action was commenced the defendant, in vacation, filed a petition, verified by affidavit, with the clerk of this court, which alleged, in substance, that the railroad company claimed the rights, privileges and immunities secured by the constitution of the United States, and that, under the color of the act of this state, above mentioned, the company was subject to be deprived of the same, and asking for a writ of *certiorari* to the state court, where the action was pending; the clerk accordingly issued the writ of *certiorari*, requiring the state court to send to the court the record and proceedings in the cause. The court hold that *certiorari* will not lie to the state court in such a case, and that the remedy remains as before the act of 1871, by writ of error under the 25th section of the judiciary act. The Legal News also prints notes of several Michigan cases by Mr. Chaney, and also Mrs. Lockwood's brief holding that "Queen Victoria controls parliament, the legislative power of England."

The Albany Law Journal for June contains an editorial article on "The Contract of Marriage," the occasion of which is the Brinkley divorce case, in which it takes a similar view of that case to the view taken by this journal in a previous number, and in which it also commends the New York rule on the subject of marriage as the preferable one. It concludes by saying: "We hope our legislature will never enact that, to constitute a valid contract of marriage, there must be the sanction of a priest, or the warrant of a magistrate, or a permission from the state, or the consent of parents, or a previous announcement to the public in any way of the intention to enter into such a contract." The Albany Law Journal also contains an article on "Ancient Lights," by J. Alexander Fulton, Esq., of Dover, Delaware. This reminds us that we have had on our desk, for some time, the "Opinion of Hon. DANIEL M. BATES, Chancellor of the State of Delaware, in the case of James E. Clawson v. Joseph Primrose, Kent County, September term, 1873," in which Mr. Fulton was counsel for the complainant, and for which we are indebted to his courtesy. This case holds that the English doctrine upon the subject of ancient lights is in force in Delaware. We have not been able to publish this opinion on account of its length.

In the article in the Albany Law Journal, Mr. Fulton says: "In Massachusetts, New York, New Jersey, Maryland, South Carolina, Louisiana, Illinois and Delaware, the principle has been recognized and enforced as a rule of property. In Connecticut, Pennsylvania, Maine and West Virginia it has been repudiated. In the other states there are no reported cases, so far as we are aware. It is to be noted, however, that the law has been changed in Massachusetts by positive enactment; while in New York, Maryland and South Carolina, it has been changed or modified by judicial departure. In New Jersey, Delaware, Illinois and Louisiana the law remains undisturbed in all its vigor. What it may be in the states yet to hear from can only be matter of conjecture. The opinion of the bar is somewhat divided, but the large preponderance is in favor of the common law principle. As one evidence of this, it may be noted that no exception was taken or dissatisfaction expressed for more than sixty years after our revolution."

We may add that the doctrine has been repudiated in Texas by judicial decision; although the common law is in force in that state, having been introduced by statute in 1840.

Mr. Fulton concludes his article as follows:

"The general doctrine in England, and the states which have adopted the common law principle, has evolved a prime and several incidental rules, which may be conveniently reduced to these *formulæ*:

"1. The uninterrupted use and enjoyment of light and air flowing into one's apartment over another's land for a period of twenty years or upwards, gives an indefeasible right to its future use and enjoyment.

"2. It is not necessary, to the acquisition of the right, that the ancient light should be on the division line between the two lots; if near enough to be materially affected by the new erection, it is sufficient.

"3. The enlargement of the light will not enlarge the right, and if the increased flow cannot be obstructed without obstructing the ancient light as well, the right is lost, as the fault was with the owner of the ancient light. But a restoration of the ancient light to its former dimensions will restore the right.

"4. The right may be lost in the same way it is acquired; to-wit, by twenty years' disuse. But if an ancient light be shut up and disused by a tenant for twenty years, without the landlord's consent, it is not so.

"5. The conversion from one use to another does not enlarge or impair the right; and if an apartment have an ancient light, and the owner sets up some business therein which requires two, he gains no additional right thereby.

"6. Obstructing an ancient light is an injury to the inheritance, and a remainderman may sue.

"7. If the owner of two adjoining lots, with a house on one and none on the other, sell the one with the house, neither he nor a subsequent purchaser can build on the unimproved lot so as to shut up the windows on that side, and this although they are not ancient.

"8. In a contemporaneous sale of such lots by the same owner, the same rule applies.

"9. Formerly, the remedy was more frequent at law; but latterly, in equity, and generally whenever the injury is substantial, a bill will be entertained. It is the preferable method in most cases, and the only complete remedy in many."

The Albany Law Journal also publishes two New York decisions of a local character, and also its usual amount of notes, abstracts of cases, etc.

The Pittsburgh Legal Journal for June 17, contains a charge of Judge WHITE, of the District Court of Allegheny county, expounding the Pennsylvania statute which relates to the forfeiture of floating logs where the owner fails to take them away within three months, holding that it is to be strictly construed. Also an opinion by SHERMAN, J., in the Circuit Court of the United States for the Northern District of Ohio, construing the United States practice act of 1872. The rest of its matter is selected.

The Chicago Railway Review for June 20, contains an article on the Wisconsin railroad law, which is creating such a stir—by E. Walker, Esq., of Chicago—which concludes as follows:

"And finally that the act of '74, does not in any manner affect the *title* of stockholders in R. property, and so far as it attempts to limit or control its income, or prescribe arbitrary tariffs for its use, it is unconstitutional and void."

The Daily Register for June 19 and 20 contains an elaborate decision of FREEDMAN, J., in Astor v. The Mayor, etc., in which he discusses the exercise of the right of eminent domain in taking property for the purpose of widening streets, and holds that a statute empowering a report to be made by *two* of three commissioners without a consultation with the third, is unconstitutional, because the constitution of the state provides that there must not be less than three commissioners. This opinion is worth the attention of those having this subject under investigation.

The Chicago Legal News of June 27, prints United States v. Cook, United States Supreme Court, which relates to the right of Indians to cut and sell timber on their reservation. Also Osborne v. United States, same court, construing the 7th section of the act of congress imposing taxes on distilled spirits (15 Stat. 127.) Also the case Porter v. Rockford, Rock Island and St. Louis Railway Co., Supreme Court of Illinois, upon the subject of the taxation of railway shares, and the equalization of railroad taxation. Also the opinion of Judge BRADY, of the New York Supreme Court, General Term, on the application of Tweed for a mandamus to compel Judge NOAH DAVIS, before whom Tweed was tried, to settle a bill of exceptions. This is a short but interesting opinion. We shall publish it hereafter. The News also contains an opinion of the United States Supreme Court in Commissioners of Boise County v. Gorman, by WAITE, C. J., holding that under the practice act of 1872, upon the filing of the bond within sixty days from the time of the entry of the judgment, a *supersedeas* may be obtained; that such a *supersedeas*, however, stays proceedings only from the filing of the bond; that it prevents further proceedings under an execution which has been issued, but does not interfere with what has already been done.

Several cases not noticed in this summary, will be noticed in our Notes of Cases next week.

Legal News and Notes.

—THE governor of Virginia has adopted a series of rules in regard to the surrender of alleged fugitives from justice from other states. Copies can be had on application to the secretary of the commonwealth.

—THE latest improvement which we have to chronicle is a telegraph service to be established between the various courts of New York city, and the offices of those lawyers who subscribe to it. The great advantage of

such a service is obvious. We trust it may prove so advantageous in New York that it will be initiated in St. Louis.

—In the New York Court of Common Pleas Justice DAILY has decided that a horse breaking away from a street car and dashing into another car, whereby a citizen was killed, was an unavoidable accident, and directed a dismissal of a suit for damages. If judges have a right to decide questions like this, what are juries for?

—THE Daily Register says: "Judge LOEW, at the Chambers of the Court of Common Pleas, on the application of Col. Geo. H. Hart, has just given a decision that Sister Irene, of the Catholic Foundling Asylum, must, if her evidence be necessary, give it in a divorce case; and that when it is specifically shown that the books of such an institution, however sheltered its ordinary position under the sacred wing of religion, must be produced if they are essential in the elucidation of a matter of right and justice. Many years ago this assumed right of exemption of those in seclusion from the world was sought to be fought in England, but in a memorable case in which a charge was made of the ill usuage of a child, the ladies of a nunnery had to appear in court under the mandate of the lord chief justice."

—HON. GEORGE S. HILLIARD, of Boston, is said to be so far recovered from an attack of paralysis as to be able to appear in public. He is planning the publication of his life of Professor Ticknor. His last literary work before his recent illness was an elaborate biography of Jeremiah Mason (the celebrated lawyer of the last generation in New England), who, like Daniel Webster, began his professional career in New Hampshire, but achieved his greatest eminence after emigration to Boston. Mr. Hilliard's biography of Mason has not been published, but was prepared and printed for private distribution among the Mason family. Mr. Hilliard will be remembered as an early associate of Mr. Sumner in the practice of the law, and in the editorial management of The American Jurist.

—THE president has approved of the bill for the distribution of the Geneva award, and nominated the following gentlemen to be judges of the court of commissioners of the Alabama claims: Hezekiah G. Wells, of Michigan; Martin Ryerson, of New Jersey; Kenneth Raynor, of Mississippi; George W. Woodward, of Pennsylvania, and Caleb Baldwin, of Ohio. Also, John Davis, of Massachusetts, to be clerk of the court of commissioners. The president afterwards withdrew the name of George W. Woodward, and nominated in his place William A. Porter, of Pennsylvania. The latter, and the other nominees to be commissioners, together with John Davis to be clerk of the court, were subsequently confirmed.

—THE New York Herald says of the ring suits recently decided by the court of appeals of that state: "The decision of the court of appeals in the suits brought in the name of the people of the state against Ingersoll, Tweed, and other members of the old city government is not a surprise to the legal profession. Very few lawyers have doubted the result. The money sought to be recovered belonged to the county of New York, and an action lies at the suit of the board of supervisors for its recovery, for the title to and ownership of the money must determine the right of action. The people of the state are not injured, and the defendants were not agents of the state. These points appeared so clear to legal minds before the decision that wonder has been expressed that the suits were ever instituted. It has been a costly litigation to the city, and it is to be hoped that the county suits will not have a similar disastrous termination.

—THROUGH the courtesy of Dr. HAMMOND, of Iowa City, we have received a copy of the constitution of the Iowa state bar association. Its objects are: "To promote mutual acquaintance and harmony among the members of the Iowa bar; to maintain a high standard of professional integrity, honor and courtesy among them; to encourage a thorough and liberal legal education; to give expression to the deliberate and well-considered opinion of the legal profession upon all matters wherein its members are properly expected to act as a body; and to assist in the improvement of the laws and the better administration of justice to all classes of society, without distinction." As this is, we believe, the the first *state* bar association which has yet been organized in the the country, it may not be uninteresting to note that its principal feature is that it provides for the organization of auxiliary associations embracing one or more counties—the state association occupying the position, not exactly of a grand lodge, but of a general convention of the whole. This constitution was drawn by Dr. HAMMOND, except those sections which are borrowed from the constitution of the Chicago bar association.

—THE application of Miss Anthony for a remission of her fine (see *ante*, p. 296), met with a different fate at the hands of the senate judiciary committee, from that which it received at the hands of the judiciary committee of the house. Mr. Edmonds, from the senate judiciary committee, by unanimous consent, made a report upon the petition of Susan B. Anthony for a remission of the fine imposed upon her by the United States District Court for the Northern District of New York, and the bill introduced in the senate to enable her to pay her fine. He said the committee reported adversely and asked to be discharged from a further consideration of the subject, for the reason that the committee did not feel satisfied that the statement contained in the petition in respect to the rulings of the judge of the northern district of New York was precisely as represented by the petitioner; and, again, the committee did not believe it had the power to review United States courts. If the petitioner thought her conviction erroneous she could apply to the executive, who had the power to pardon her. The committee was discharged from the further consideration of the subject, and the bill was indefinitely postponed. There was one senator, however, who thought that congress ought not to let the occasion pass without declaring its disapproval of the fact that a citizen had been convicted in a criminal case without the verdict of a jury. Mr. Carpenter, expressing his views as a minority of the senate judiciary committee, regarding the memorial of Susan B. Anthony, says the decision of the court on her trial was erroneous in taking the case from the jury and directing their verdict, and refusing the request of her counsel to have the jury polled—thus denying to the jury, not only the moral right, but even the power of rendering a verdict of not guilty. Mr. Carpenter concurs with the majority of the committee that congress cannot grant the precise relief prayed for in the memorial; but he deems it to be the duty of congress to declare its disapproval of the doctrine asserted and the course pursued in the trial of Miss Anthony, and all the more for the reason that no judicial court has jurisdiction to review the proceedings therein.

—IT appears that General Butler espoused the cause of Mrs. Lockwood, whose application to be admitted to the bar of the Court of Claims was recently denied. He reported a bill authorizing women, otherwise qualified, to practice as attorneys in the several courts of the United States. It was ordered to a third reading by a vote of 96 to 65, "amid great hilarity." In the meantime Mrs. Lockwood has prepared a brief on the question, which some of the law journals have done her the kindness to print. We confess to being somewhat disappointed in this brief. If Mrs. Bradwell had had the matter in hand she would have done better. But perhaps it only illustrates the old maxim which does not impute much wisdom to the person who attempts to be his own lawyer. But seriously, Mrs. Lockwood had a golden opportunity before her, not only to give character to her cause, but also to advance her reputation as a lawyer, by answering the inconclusive arguments which Mr. Justice NOTT put forth as *legal* reasons for refusing her application. She might have gone further. She might, *perhaps*, have uprooted that learned justice in the more solid position he took when he planted himself upon ancient custom and prejudice and the eternal fitness of things. In fact, she might have

> "Made herself a fearful monument—
> The wreck of old opinions."

But, unfortunately, she made no such thing. She cited the District of Columbia married woman's law, called attention to the fact that women have been admitted as attorneys in several other courts throughout the country, and informed the persons for whose benefit the brief was intended that Queen Victoria "controls parliament—the legislative power of England." This last observation probably failed to strike the average congressman as being very profound. Indeed, Mrs. Lockwood would have been more discreet had she gone back into antiquity and cited the doubtful fame of Semiramis, or the more historic achievements of Zenobia, Queen of the East, who sent one Roman general home with the loss of his army and of his reputation, and the conquest of whose dominions deserved the utmost exertions of the great Aurelian. Indeed, had Mrs. Lockwood quoted a few of the stately sentences in which Gibbon describes that most splendid woman of antiquity, they would have impressed the reader more profoundly than all the rest of her brief.